

REPORTER'S RECORD
CAUSE NO. D-1-GN-16-000517

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S.O.,) IN THE DISTRICT COURT
)
Plaintiff,)
)
VS.)
)
) TRAVIS COUNTY, TEXAS
)
UNIVERSITY OF TEXAS AT)
)
AUSTIN PRESIDENT,)
)
GREGORY L. FENVES,)
)
et al., Defendants,)
)
(in their official)
)
capacity only.)) 419TH JUDICIAL DISTRICT

APPLICATION FOR TEMPORARY INJUNCTION

On the 17th day of February, 2016, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Karin Crump, Judge presiding, held in Austin, Travis County, Texas:

Proceedings reported by machine shorthand.

EXHIBIT 6

A P P E A R A N C E S

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EXHIBITS OFFERED BY PLAINTIFFS

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1 **PROCEEDINGS**

2 **February 17, 2016**

3 THE COURT: All right. So this is
4 D-1-GN-16-000517, S.O. versus Greg Fenves, University of
5 Texas at Austin. All right. May I have your
6 announcements?

7 MR. SERGI: David Sergi for S.O.

8 THE COURT: Uh-huh.

9 MR. SERGI: Your Honor, I'm waiting for
10 co-counsel who's waiting for one of our witnesses.

11 THE COURT: Okay.

12 MR. SERGI: And he was going through
13 security.

14 THE COURT: Okay.

15 MR. SERGI: So we'll need a couple of
16 minutes.

17 MR. PATTERSON: Michael Patterson on
18 behalf of the Attorney General's Office representing the
19 various UT defendants.

20 THE COURT: All right.

21 MS. COLMENERO: And Angela Colmenero, also
22 with the Attorney General's Office for defendants.

23 THE COURT: Okay. Thank you.

24 All right. Well, I'll take a look at your
25 response while we're waiting on your co-counsel. Who is

1 your co-counsel?

2 MR. SERGI: Ms. Anita Kawaja.

3 THE COURT: And you have objected to
4 hearing a plea to the jurisdiction this morning?

5 MR. SERGI: Your Honor, actually what I
6 said was I have no problem hearing it this morning. The
7 issue is I want to make sure that if we have a ruling,
8 that we also be able to take up our temporary
9 injunction.

10 THE COURT: Okay. That's not a problem.

11 MR. SERGI: As to the property, Your
12 Honor, I think this case really ought to be decided on
13 summary judgment. I think most of the facts are really
14 undisputed, and I really think that if we deferred the
15 hearing on the plea to the jurisdiction to when we have
16 the -- a summary judgment hearing, which I think we
17 could do very shortly, that it would dispose of the
18 entire case.

19 THE COURT: Response?

20 MR. PATTERSON: Well, Your Honor, the
21 courts are supposed to take up subject matter
22 jurisdiction at the earliest opportunity. The State of
23 Texas and its entities have sovereign immunity unless
24 plaintiff, in a constitutional claim, due process, equal
25 protection --

1 THE COURT: Uh-huh.

2 MR. PATTERSON: -- can demonstrate a prima
3 facie cause of action, but more importantly in this
4 case, we're raising the ripeness issue. Plaintiff is
5 currently in the process of receiving a process, so what
6 we've raised in our PTJ is that without that process
7 being concluded, this whole matter is premature.

8 THE COURT: Uh-huh.

9 MR. PATTERSON: She's not been deprived of
10 a property interest, and there's no guarantee she would
11 be deprived of a property interest at the conclusion of
12 the process that began at her request, and so we would
13 argue that the Court should hear any jurisdictional
14 challenges at its earliest opportunity and that we not
15 wait until a summary judgment hearing.

16 THE COURT: Well, I think even if you
17 scheduled a summary judgment, you would be looking at or
18 about the time where she's scheduled to have a hearing.

19 MR. SERGI: That is correct, and one of --
20 let me just address one brief issue.

21 THE COURT: Uh-huh.

22 MR. SERGI: In terms of the ripeness,
23 there's an Attorney General Opinion with -- involving
24 the University of Texas which says they do not have a
25 right to seek the remedy that they're seeking, which is

1 revocation. And so when you look at the Attorney
2 General Opinion --

3 THE COURT: Uh-huh.

4 MR. SERGI: -- from a due process point of
5 view, they're attempting an *ultra vires* act --

6 THE COURT: Uh-huh.

7 MR. SERGI: -- which they have no
8 authority to do by their very own opinion.

9 THE COURT: Do you have a copy of that
10 opinion?

11 MR. SERGI: Yes, it's in -- it's in the
12 material.

13 THE COURT: Okay. And this is in
14 response?

15 MR. SERGI: Yes.

16 THE COURT: Okay. Are you familiar
17 with -- this is the 1969 opinion?

18 MR. PATTERSON: I had the opportunity to
19 look at it briefly this morning, Your Honor.

20 THE COURT: Okay.

21 MR. PATTERSON: And just if -- if I may?

22 THE COURT: You may.

23 MR. PATTERSON: While the opinion -- well,
24 number one, with the lateness that I cite, Your Honor, I
25 don't know whether or not it is still binding

1 irrespective of what it holds.

2 THE COURT: Okay.

3 MR. PATTERSON: What the opinion noted in
4 that case, though, was that it dealt with the means by
5 which a degree could be revoked.

6 THE COURT: Right.

7 MR. PATTERSON: Here, again, going to the
8 ripeness issue, we're still in the middle of a process
9 to determine whether or not the University has an
10 interest in seeking plaintiff's degree. It's still not
11 established whether or not pursuant to the policy -- to
12 the process outlined in the UT manual, which is our
13 exhibit -- is Exhibit C to my PTJ, whether or not she
14 committed misconduct, and even if she is found to have
15 committed misconduct, at that point it's not yet
16 established what the disciplinary committee will
17 recommend in terms of a sanction.

18 THE COURT: Right.

19 MR. PATTERSON: And so irrespective of
20 what manner -- the manner in which the University might
21 go after plaintiff's degree, whether it's an
22 administrative process or as plaintiffs contend by suing
23 her, that plaintiffs are asserting the only way to
24 revoke her degree is to file a lawsuit against her in
25 court. That's not been established and that doesn't

1 address the ripeness issue.

2 THE COURT: Uh-huh.

3 MR. PATTERSON: There's nothing in that
4 Attorney General Opinion, accepting it's valid, that
5 would detract or detour the University from undergoing
6 any process to -- to afford Ms. -- the plaintiff an
7 opportunity to address the allegations against her.

8 THE COURT: Uh-huh.

9 MR. PATTERSON: And so nothing in that
10 opinion changes what we're here today about, which is --
11 what we're arguing today, which is this is not a matter
12 that's ripe for the Court. It's not ripe for an
13 injunctive hearing and we believe it would be proper to
14 dismiss it until such time as there's actually been a
15 final administrative decision against the plaintiff.

16 THE COURT: Okay. All right. I
17 appreciate your argument, and let's talk a little bit
18 about the relief that you're seeking and why there's, in
19 your opinion, imminent harm that would cause this Court
20 to have to take injunctive action at this point in time
21 prior to the conclusion of the administrative appeal --

22 MR. SERGI: First of all, Your Honor --

23 THE COURT: -- or the administrative
24 process.

25 MR. SERGI: -- they do not have the right

1 to revoke a degree, and when you look at all of the
2 correspondence, all of the proposed disciplinary
3 resolutions that have been sent to our client, they all
4 revolve around revocation of the degree because they
5 can't suspend her, they can't expel her. What real
6 remedy do they have other than expulsion or potentially
7 asking her to amend her dissertation? So given the fact
8 that --

9 THE COURT: Well, let's stop there. I
10 mean, if that's a relief that is being sought among
11 other potential actions, isn't that something that is
12 not deprivation of property or something that would lead
13 to require injunctive relief?

14 MR. SERGI: I will let Ms. Kawaja address
15 that.

16 MS. KAWAJA: Good morning, Your Honor. I
17 apologize for being late.

18 There are a couple reasons why they're
19 wrong to even suggest that they're going after a lesser
20 sanction because they are predisposed to revoke her
21 degree. They don't even -- they don't even refer to her
22 as a doctor anymore. They send her correspondence as
23 Miss, and we've objected to that over and again and they
24 just don't care.

25 Now, there's another reason, though, why

1 we don't think they're considering lesser sanctions and
2 we think any suggestion that they are is just a false
3 pretense. Back in March of 2015 -- well, first of all,
4 they already revoked it once in 2014 and then reinstated
5 it after litigation was started. And then a year later
6 in 2015, they sent her a letter that said the next step
7 of this process is this: You can take an administrative
8 disposition where we have a finding of misconduct, and
9 you don't contest that finding and our sanction is
10 revocation. That's it. Or if you want to dispute the
11 finding, you go to a hearing, and that's where we are
12 here. They gave her a Catch-22. She couldn't win. It
13 was either give up your degree or go to a hearing and
14 fight it in front of a panel of undergraduate students
15 who don't know anything about organic chemistry. So
16 that's how come we know they want to revoke the degree,
17 and that's their plan. There really is no other
18 feasible remedy.

19 At one point in time very early on, they
20 did discuss with her possibly revising her dissertation,
21 and then that was yanked off the table immediately.
22 They've never allowed her an opportunity to discuss her
23 issues with the dissertation committee to explain it
24 because the allegations they've made are unfounded.
25 There have been a lot of people handling the evidence

1 that they're relying on for allegations of false
2 reporting or misreporting, and so that's a real big
3 issue when we talk about evidentiary proof that there
4 was any intentional misconduct by our client.

5 THE COURT: But those are all issues for
6 appeal and would be part of the record that the -- this
7 Court serving as the appellate court for the
8 administrative appeal would have an opportunity to
9 review and --

10 MS. KAWAJA: Not -- not necessarily so,
11 Your Honor, because we're talking about *ultra vires*
12 conduct and we have claims for declaratory relief to get
13 them to act in line with the statutes that give them the
14 authority to do anything.

15 THE COURT: Okay. So let's talk a little
16 bit about that. What -- specifically you're talking
17 about, one, the composition of the committee itself, you
18 have -- you have issue and take issue with the
19 composition that those -- the people who are contained
20 within the committee are not sufficiently qualified?

21 MS. KAWAJA: That's actually the second
22 half of the case, Your Honor.

23 THE COURT: Okay.

24 MS. KAWAJA: The first half of the case
25 is: What is the scope of their authority to revoke her

1 degree? And we have to start at the beginning, which I
2 think the Attorney General's Office has failed to do.
3 They have assumed that they have this administrative
4 power to do whatever they want just because they're a
5 state agency --

6 THE COURT: Right.

7 MS. KAWAJA: -- but that's not true.
8 They're limited by what the Legislature says they can
9 do.

10 THE COURT: Okay. So point me to the
11 direction of where I can see that.

12 MS. KAWAJA: So the statute you need to
13 look at, Your Honor, is 65.31 in the Texas Education
14 Code, and we've got a copy of that for you. I believe
15 it's tab -- Tab 6.

16 THE COURT: In which binder?

17 MS. KAWAJA: In the black binder, the
18 skinny black binder. I don't know if that's ours or the
19 State's.

20 MR. SERGI: Your Honor, I can just give
21 you this.

22 THE COURT: I have a blue, a black and a
23 white.

24 MR. SERGI: Your Honor, it would be in our
25 white binder.

1 THE COURT: Okay. Thank you.

2 MS. KAWAJA: So statute --

3 THE COURT: All right. So you've handed
4 me Texas Education Code, Section 65.31, General Powers
5 and Duties.

6 (Cell phone alarm interruption)

7 MS. KAWAJA: So that's the current statute
8 that has been around for decades. It is a little
9 different from the one that's being -- is cited in the
10 AG opinion, but on the key point of what is their power,
11 it's the same. It says you award a degree, you confer a
12 degree. Nowhere in there does it say you revoke a
13 degree. So the analysis of the AG opinion from 1969
14 hasn't changed.

15 THE COURT: Okay.

16 MS. KAWAJA: So, actually, I called the
17 AG's office several times and talked to their resource
18 department and they confirmed the AG opinion we
19 presented to you is still valid authority. It's not
20 been modified, reversed, revoked or otherwise withdrawn.

21 THE COURT: Okay. All right. University
22 of Texas, under which authority are you acting for the
23 revocation process?

24 MR. PATTERSON: Well, two authorities,
25 Your Honor. In terms of the statute that they're

1 citing, I mean, our argument is implicit in the right to
2 bestow a degree and to determine the conditions upon
3 which a degree may be granted. A university has some
4 authority to -- upon learning of misconduct by the, in
5 this case the Ph.D. student -- or possible fraud, to
6 explore that, to follow a process that's -- that is set
7 forth in the University catalog and to require the
8 student or the former student to answer to the charge.

9 Now, plaintiff here is going to the end
10 result. They're challenging whether or not the
11 University in the end will have the right to revoke her
12 degree. Although, I think really what they're arguing
13 is whether or not they would have the right to revoke
14 their degree by way of litigating against her --

15 THE COURT: Right.

16 MR. PATTERSON: -- under contract versus
17 administrative process that automatically null and voids
18 her diploma. Again, I've only this morning had an
19 opportunity to look at that decision. I will note that
20 at the end of the decision --

21 THE COURT: Uh-huh.

22 MR. PATTERSON: -- it notes that the
23 opinion does not preclude the UT Board of Regents from
24 holding as a legal matter that that degree was obtained
25 by fraud --

1 THE COURT: Okay.

2 MR. PATTERSON: -- and it doesn't preclude
3 the University from making that known.

4 THE COURT: And -- and was -- obviously I
5 haven't had an opportunity to review this, but tell me
6 does this -- is this post-graduation?

7 MR. PATTERSON: Yes, Your Honor, that
8 opinion dealt with a Ph.D. student who I believe
9 obtained her degree a decade or more before.

10 THE COURT: Okay. Was there a
11 determination that the actions were *ultra vires* or not?

12 MR. PATTERSON: I don't know whether it
13 went directly to *ultra vires*, but it just -- it
14 was determining whether -- since it was a request for an
15 opinion on authority, it was addressing whether or not
16 at that time under those facts the University had any
17 authority to revoke a degree.

18 THE COURT: Okay.

19 MR. PATTERSON: Again, I can -- we'll
20 speak to whether or not I believe it is actually still
21 binding or authoritative. I can say that case law
22 dealing generally with student disciplinary proceedings
23 requires due process. It -- the question is whether or
24 not the University is taking away a property interest
25 without affording S.O. process in doing so.

1 THE COURT: Uh-huh.

2 MR. PATTERSON: And here, the record
3 before the Court demonstrates that plaintiff has been
4 given notice, multiple notices of process against her.
5 Exhibit E, just referencing plaintiff's reference to
6 previous litigation --

7 THE COURT: Yes.

8 MR. PATTERSON: -- following that
9 litigation, my predecessor, another Assistant Attorney
10 General at the time, in Exhibit E sent a letter February
11 27th of 2014 to S.O.'s then attorney at the time.

12 THE COURT: Okay.

13 MR. PATTERSON: Therein Mr. Gibson laid --
14 set forth that this is the process that'll be started.
15 Two years ago, she was informed that the 2013-2014
16 University catalog would be followed, she was informed
17 what he thought they would probably -- the University
18 would probably look at in terms of what that catalog --
19 what provision she may have violated and was -- referred
20 that student affairs would be in touch with her
21 following that. And following February 2014, student
22 affairs at UT did get in touch with S.O. and her then
23 attorney and initiated the current process that we're
24 still undergoing.

25 And so this has been two years in the

1 making that UT has afforded S.O. process to determine --
2 just to get to the resolution of whether or not it's
3 found that she committed misconduct in obtaining her
4 degree.

5 In terms of the student disciplinary
6 committee that they're also raising as an issue,
7 S.O. chose that. Under the 2013-2014 catalog there are
8 two options for disciplinary proceedings. One is a
9 hearing officer, could be a faculty member, or, two, at
10 the student's -- or in this case S.O.'s request would be
11 this student disciplinary committee and Ms. -- S.O. did
12 select Exhibit G was -- is her attorney at the time
13 forwarding to UT, to Jason Thibodeaux, who was in the
14 student affairs office at the time, her decision. This
15 followed -- this was late -- much later actually. This
16 was about April 2015. This followed the administrative
17 conduct proceedings that opposing counsel referenced.

18 At the conclusion of that process,
19 S.O. chose to take the charge to the full disciplinary
20 proceedings and she chose the means by which would be a
21 student disciplinary committee, and at that time,
22 S.O. did not object to the idea of availing herself of
23 that remedy.

24 So I can only, Your Honor, turn back to
25 what the point of this is. S.O. is still undergoing a

1 process. It's not concluded. It's not reached a
2 determination. If S.O. believes that they cannot
3 administratively notate that her degree's revoked, she
4 can challenge it at the time once a determination is
5 actually reached.

6 THE COURT: So other than coming here,
7 what is -- what is the procedure for challenging that
8 decision of the student disciplinary committee?

9 MR. PATTERSON: If the disciplinary
10 committee -- irrespective of how the disciplinary
11 committee finds, there's an appeal process that can be
12 taken by S.O. or by the University component charging
13 her.

14 THE COURT: Okay.

15 MR. PATTERSON: And the president of the
16 University would have the -- has the opportunity then to
17 review the whole record that was created at the actual
18 hearing. So at the hearing that's currently set for
19 March 4th, S.O. will have the opportunity to again
20 challenge the -- the person who's leading the hearing, a
21 professor at the University. She'll have the
22 opportunity to challenge the composition of the
23 disciplinary committee or panel.

24 THE COURT: She has the -- she has the
25 opportunity to challenge the composition at that time?

1 MR. PATTERSON: She can raise it as an
2 objection, Your Honor.

3 THE COURT: Okay. Will she have an
4 opportunity to have a different panel?

5 MR. PATTERSON: The faculty member who
6 leads the commit -- the hearing will make a decision at
7 that time, and so I can't speculate as to what the
8 panel -- the committee member would --

9 THE COURT: I noted there was some
10 objection to Ms. Lungwitz's qualifications. I saw that
11 there was an objection raised and overruled. What is
12 that process?

13 MR. PATTERSON: There again, S.O. had the
14 opportunity to object to Ms. -- to Professor Lungwitz --
15 Lungwitz's participation in the process. Professor
16 Lungwitz is the person who makes the determination at
17 the time as to whether or not that objection should be
18 sustained or not. If it's made on the record at --

19 THE COURT: To her own qualifications?

20 MR. PATTERSON: To whether or not she's
21 biased, Your Honor. The objection here from plaintiff
22 was that because of who Ms. -- Professor Lungwitz's
23 husband is that she shouldn't serve as the hearing
24 officer, and Ms. -- and Professor Lungwitz under policy
25 of the University has the right to determine that

1 qualification. That will be reviewed by the president
2 if S.O. raises that as an objection at her hearing.

3 THE COURT: Okay.

4 MR. PATTERSON: And the president -- that
5 would be a grounds on which the president, if he
6 believes it proper, could grant the appeal.

7 THE COURT: Is there some process to
8 expediting that review of her decision pertaining to her
9 own bias? Does that --

10 MR. PATTERSON: No, Your Honor.

11 THE COURT: So that doesn't go up
12 separately? These all go together to the president and
13 then --

14 MR. PATTERSON: As a complete record,
15 yeah.

16 THE COURT: Okay. Okay.

17 MR. PATTERSON: And it's at that point the
18 president will have an opportunity to issue a decision
19 on that appeal. But here again, regarding their concern
20 about, for example, the president, under the case -- or
21 the professor who's hearing the case, the case law says
22 it's only actual bias that would disqualify someone and
23 it has to be bias in the record. Specifically the
24 record created through the process has to demonstrate an
25 actual bias, not just an apparent bias. That is

1 something that S.O. will have the opportunity to
2 demonstrate at her hearing, which she's currently trying
3 to put off on March 4th, and if she raises that March
4 4th, she can raise it then in her appeal if she loses
5 the student disciplinary proceeding.

6 THE COURT: Is there any timeframe for how
7 long the appeal will take if S.O. appeals a decision of
8 the committee?

9 MR. PATTERSON: I believe the president is
10 supposed to issue an opinion within 30 days.

11 THE COURT: Okay. So this should be
12 complete as far as the UT's appellate process within
13 approximately March, mid-March.

14 MR. PATTERSON: I believe the student
15 disciplinary committee has 30 days themselves to issue a
16 determination.

17 THE COURT: So we're talking about April,
18 May.

19 MR. PATTERSON: April or May, Your Honor.

20 THE COURT: Okay. And what's the status
21 right now? So is she deemed to have a Ph.D. or not?

22 MR. PATTERSON: She is. That was after
23 the internal investigation a few years ago had found --
24 it was a scientific inquiry had found cause that she had
25 committed academic misconduct. They internally did try

1 to revoke her degree.

2 THE COURT: Uh-huh.

3 MR. PATTERSON: Her attorney at the time
4 brought an action for a TRO and UT immediately
5 reinstated it and initiated this process.

6 THE COURT: Okay. So there's nothing that
7 precludes her from working in her profession with her
8 Ph.D. until the conclusion of the appellate process or
9 the committee decision.

10 MR. PATTERSON: Correct.

11 THE COURT: Which one?

12 MR. PATTERSON: Until the conclusion of
13 the appellate process.

14 THE COURT: Okay.

15 MR. PATTERSON: And that's if S.O. chooses
16 to avail herself of the appellate process.

17 THE COURT: All right. So is UT
18 questioning whether there is imminent harm in the plea
19 of --

20 MR. PATTERSON: Absolutely. In terms
21 of -- well, in terms of the -- well, it's sort of
22 bifurcated, Your Honor. There's a jurisdictional
23 question. Then there's the TI question.

24 THE COURT: Okay.

25 MR. PATTERSON: It really goes to --

1 THE COURT: And I'm kind of hearing both
2 of them obviously together because --

3 MR. PATTERSON: We don't believe there's a
4 risk of imminent harm. Again, at the -- there's several
5 months before this process is finalized, presuming that
6 S.O. doesn't request further extensions. There was
7 originally supposed to be a hearing last summer, and a
8 letter sent by Mr. Sergi, at their request, that hearing
9 was put off until January.

10 THE COURT: Okay.

11 MR. PATTERSON: And so then the hearing
12 was set for January 29th. Again, at S.O.'s request,
13 that hearing was then reset to March 4th. So it's sort
14 of the ball's been kicked down the field repeatedly. So
15 presuming there's no further request for extension,
16 there's months -- still a few months before there's even
17 a final determination. There's no imminent harm being
18 demonstrated that will prevent S.O. from working in her
19 career or holding herself out as a recipient of a Ph.D.
20 from UT.

21 THE COURT: Well, let me ask you this. In
22 the event that she does not prevail in committee, she
23 goes up to the president and does not prevail on the
24 administrative internal appeal, and then the appeal to
25 our court, what is the process for UT? Do they continue

1 to allow her to maintain her Ph.D. through the District
2 Court appeal and up through the Third Court of Appeals?
3 Where or when -- what's the procedure that UT has for
4 actually revoking the Ph.D.? At what point or stage
5 would she lose her Ph.D. assuming and presuming that she
6 loses all the way along the way?

7 MR. PATTERSON: At the conclusion of the
8 disciplinary process, student affairs would send a
9 letter to the registrar's office noting that -- of what
10 the final determination was, and at that point the
11 registrar office would take action. At that stage, my
12 understanding is it would be, at least as an internal
13 matter, immediate at the conclusion of that process, and
14 then S.O. could of course seek a TRO if she believes
15 that that is -- if that action is violating her
16 constitutional rights.

17 THE COURT: Okay. So we're talking --
18 again, we're talking about the April to May timeframe.

19 MR. PATTERSON: Roughly, Your Honor.

20 THE COURT: Okay. And they would -- she
21 would be apprised of if and when and before that action
22 takes place.

23 MR. PATTERSON: My understanding is she
24 would be apprised of the final determination.

25 THE COURT: Through a letter?

1 MR. PATTERSON: Yes. Yes, Your Honor --
2 or through her attorney.

3 THE COURT: To her counsel. Okay. All
4 right. Thank you.

5 All right. Response?

6 MS. KAWAJA: Uh-huh.

7 THE COURT: And go ahead and state your
8 name for the record. I'm sorry.

9 MS. KAWAJA: Anita Kawaja.

10 THE COURT: Thank you.

11 MS. KAWAJA: K-a-w-a-j-a.

12 Several points to make, Your Honor.

13 THE COURT: Certainly.

14 MS. KAWAJA: With respect to the question
15 of authority, if you find that they don't have the
16 authority to do anything, which is a very real
17 dispute -- it's presently before the Court. It's a pure
18 question of law, statutory construction, that is ripe,
19 and there's no reason the Court shouldn't decide that
20 issue, and that's what we're asking the Court to do with
21 the injunction that we'd like to have in a couple weeks
22 or so.

23 THE COURT: Okay.

24 MS. KAWAJA: If the Court somehow thinks
25 there's authority, then we get to the other issues which

1 are the constitutionality of their process. Now,
2 they've been citing and relying on their 2013 rules to
3 say, "We gave her a choice between this disposition of
4 taking revocation or go to a hearing, and, hey, she
5 chose a student panel." She objected every step of the
6 way. That was not a voluntary choice, Your Honor,
7 and -- in fact, we'd like to show you a video of what UT
8 has sent our client to say, "This is a sample of what
9 your hearing will be like." It's a short two-minute
10 video.

11 I don't know if you've talked to me about
12 it, David.

13 THE COURT: Well, before -- before we go
14 there, let me ask you this. What UT -- what I'm hearing
15 UT say is that they have an implicit authority under the
16 statute. Is there any -- do you have -- either of you
17 have any authority one way or the other? I presume that
18 the University has many powers that are not specifically
19 outlined in the Education Code. So --

20 MS. KAWAJA: You're right, Your Honor, and
21 so here's the thing. They have the implicit authority
22 to effectuate rules and procedures to carry out their
23 express duties.

24 THE COURT: Uh-huh.

25 MS. KAWAJA: They have to be reasonably

1 necessary to carrying out the express duties, and there
2 is case law on that we've cited to you.

3 THE COURT: Okay.

4 MR. SERGI: Now, they can't seriously
5 argue that revoking a degree has anything to do with the
6 conferring of a degree, which is the limit of their
7 express authority.

8 THE COURT: Well, I mean, I presume that
9 the argument is that there's some sort of reputation
10 that they have to maintain in not allowing someone --
11 and obviously for the purposes of today, I have to
12 presume some facts and that doesn't mean that they are
13 at all, but just -- that their position is that they
14 have to maintain the reputation of their Ph.D. program,
15 and if there is some alleged dishonesty, that they have
16 a duty to do -- to have some sort of procedure to
17 question what happened and to --

18 MS. KAWAJA: I have three points I'd like
19 to make to that, Your Honor.

20 THE COURT: Okay. Uh-huh.

21 MS. KAWAJA: First, under the AG opinion
22 and what we've been arguing is if they're concerned
23 about that, they can do whatever notation they want
24 internally but they can't go represent to the world,
25 "We've revoked her degree," or report that.

1 Second --

2 THE COURT: Okay. So let me stop you
3 there on Point 1. So their -- are you arguing that
4 there is no process that the University would have to
5 revoke a diploma at all?

6 MS. KAWAJA: No. We're saying if there is
7 a process, it's in this court. It's not an
8 administrative process where they get the president to
9 rubber-stamp what some committee found. Okay? The
10 committees that have already looked at this, Your Honor,
11 are interesting because you had an investigative
12 committee that had a dissenting member, you had a
13 dissertation committee that included the complainant,
14 who has a serious bias and interest in preserving his
15 record.

16 THE COURT: Wait, wait, wait. Before you
17 get there, let's just talk procedure.

18 MS. KAWAJA: Sure.

19 THE COURT: And I'm happy to talk about
20 composition in a moment, but let's talk, because what --
21 what I need to understand is -- typically how we see
22 these cases is on administrative appeal, and the
23 University of Texas is an agency just as many -- you
24 know, Health and Human Services -- any agency. It's
25 treated in the same manner because their processes take

1 place, and then at the conclusion of those processes, we
2 see them at the conclusion of that process and on appeal
3 acting as an -- an appellate review.

4 MR. SERGI: Uh-huh.

5 THE COURT: So what makes this different?
6 How is this process different from -- and I see that
7 you're saying it doesn't fall specifically within the
8 code of conferring a diploma, but how does it not fall
9 within UT's implicit powers to handle their -- their
10 graduate programs?

11 MS. KAWAJA: The revocation of a degree is
12 not necessary to the duty of conferring or awarding a
13 degree, and that's the only express duty they're
14 allowed. Okay? If they want to revoke it, it's a
15 contract right and it's a property right and a liberty
16 right -- the liberty -- under the Texas Constitution --
17 well, the Federal Constitution as well. We're not
18 making federal claims, but under state claims, she has a
19 real property interest there. I don't think they've
20 disputed that. They need to come here, treat it as a
21 contract, and which brings me to the point that they
22 keep relying on these 2013 rules to say, "Hey, we've
23 given her the choice and she picked a student panel."

24 THE COURT: Right.

25 MS. KAWAJA: She wasn't a student in 2013

1 or '14. The case law is very clear on this. You apply
2 the rules in effect when the student was first enrolled
3 in the school. You don't get the opportunity to apply
4 amended rules or modified rules retroactively. We
5 presented that case law to Professor Lungwitz, who was a
6 legal professor. She completely disregarded that.

7 THE COURT: Uh-huh.

8 MS. KAWAJA: Under the 2003 rules, which
9 we think are unconstitutional, they don't even have that
10 provision. So they've tried to argue, "Well, she gets a
11 better process under these new rules." That's absurd.

12 THE COURT: So -- so let's -- let's just
13 talk this through. What would the procedure be for the
14 University of Texas? They would sue your client for --

15 MS. KAWAJA: A breach of contract. They
16 would sue for misconduct or fraud, whatever theories
17 they want to come up with. But if after their own
18 internal investigation they've concluded or they think
19 there's some potential misconduct, they need to go to
20 their Board of Regents and say, "We've got a problem
21 here and this is our proposed solution and we need to
22 take it to court. Do we have permission to do that?"

23 THE COURT: Okay. So you haven't found
24 anything other than the 1969 opinion that addresses this
25 specific issue? I assume that this has come up before.

1 No?

2 MS. KAWAJA: Strangely, Your Honor, the
3 authority to revoke has not come up in Texas.

4 THE COURT: Anywhere else?

5 MS. KAWAJA: No -- well, they've cited to
6 you cases from other jurisdictions --

7 THE COURT: Uh-huh.

8 MS. KAWAJA: -- but they're not on point
9 because they don't have the Texas statute that controls.

10 THE COURT: Do they have similar statutes
11 that provide only the power to confer?

12 MS. KAWAJA: Candidly, Your Honor, I don't
13 know as I stand here, but I will tell you this. When
14 you go to the Texas statute, 65.31 in the Education
15 Code, the notes of decisions, this AG opinion is listed
16 there from 1969, and so that would suggest the weight of
17 that authority and that it applies here.

18 THE COURT: And that -- and you've handed
19 me the notes from what year? I don't see --

20 MS. KAWAJA: The notes of decisions?

21 THE COURT: Yes.

22 MS. KAWAJA: It's the current Westlaw,
23 Your Honor.

24 THE COURT: Okay. All right.

25 MS. KAWAJA: I'd like to address another

1 point where you were asking about why can't they just do
2 what other administrative agencies do that have this
3 implied power. Other agencies, however, have a
4 legislative scheme in place for revocations of a
5 driver's license or various other licenses which escape
6 me at the moment --

7 We talked about them in the car --

8 MR. SERGI: Law degrees.

9 MS. KAWAJA: Law degrees.

10 THE COURT: Uh-huh.

11 MS. KAWAJA: So the legislature knows how
12 to put in a scheme to revoke a degree, and they've had
13 50 years nearly to go back and get this fixed or changed
14 or modified to support what they're trying to do. With
15 respect to degree revocations, we have not had a chance
16 to get this information from the University, but the
17 revocations are rare. They're a harsh remedy, which is
18 why you're not going to find them.

19 Secondly, most of the time students if
20 they are having their degree revoked, they don't have
21 the means to challenge it.

22 THE COURT: Right.

23 MS. KAWAJA: They're really -- they're
24 really sort of David and Goliath.

25 THE COURT: So take me back just a little

1 bit because I would -- I would like a little bit of
2 historical perspective. What -- she graduated in which
3 year?

4 MS. KAWAJA: 2008, Your Honor.

5 THE COURT: With her Ph.D. And what
6 information was learned between 2008 and the present
7 that triggered -- well, I say between 2008 and 2014 that
8 triggered the initial processes?

9 MS. KAWAJA: I'm happy to explain that,
10 because this conduct and how this all was triggered
11 would suggest to most people, as it did the
12 investigating committee, that she had no intent to
13 deceive anybody or commit a fraud. She did her research
14 from 2003 to 2008 and she had two different focuses.

15 THE COURT: Uh-huh, uh-huh.

16 MS. KAWAJA: The second part of her
17 research was on creating a synthetic substance called
18 Lundurine.

19 THE COURT: Uh-huh.

20 MS. KAWAJA: She proposed her experiment,
21 she worked on it with her graduate advisor, who approves
22 everything. There's that mentoring relationship.

23 THE COURT: Professor Martin.

24 MS. KAWAJA: Yes. And so she -- she does
25 her experiments. She doesn't ultimately create the

1 substance and she has difficulty. That's what she
2 reports. Now, she graduates and leaves in 2008.

3 There are three different compounds that
4 were created in her process where when she reached the
5 end of the process, she's like, "I'm not going to get to
6 the end," and she deliberated over all of her data with
7 Professor Martin. So now she's graduated and she's
8 gone, and there's a dissertation committee who had to
9 approve and endorse her after Professor Martin's
10 endorsement, a committee of five.

11 Now, 2011, fast-forward, the plaintiff is
12 attending a party for Professor Martin's birthday, at
13 which time he discusses with her the fact that he's had
14 other students to continue her research. She had no
15 idea that was going on. So they were still trying to
16 create that substance that she didn't create and he
17 wanted -- he had another student, a post-doc, who did
18 two kinds of experiments. One, he tried to reproduce my
19 client's work, and then he did his own, trying a
20 different method to reach their goal. That didn't
21 succeed. So back to her work that he reproduced.

22 When they approached her in 2011, they
23 said, "We'd like to publish it. You know, this post-doc
24 only got so far, but we'd like to use your work and
25 publish it." Why they would want to publish work to

1 say, "We didn't have any success," is questionable. But
2 it may be that they were trying to help that post-doc.
3 She said, "Look" -- she was hesitant, she was reluctant,
4 but ultimately said, "If my work has been reproduced,
5 okay."

6 Now, what she didn't know, only learned
7 much later, was that the post-doc who was supposed to
8 reproduce and confirm the results that she obtained, he
9 only did one of four confirming tests, and so that
10 created some confusion. But ultimately, he reproduced
11 her work and they published. He was responsible, that
12 post-doc, with Professor Martin with attaining the data
13 that goes to the journal publication to say, "Here's the
14 data to support our article." He was the one
15 responsible with Professor Martin to attain the data
16 from the labs and submit it. That's what he did.

17 Now, we've got another grad student that
18 comes in with Professor Martin named A.N. He starts to
19 do some of the same research on the same product and he
20 raises questions and says, "This data looks strange to
21 me." So he's got his issues, and then all of this
22 process began.

23 So we've got our client who was reluctant
24 to publish something that she just didn't think was
25 noteworthy dragged into a process to protect a professor

1 who had multiple opportunities to identify any
2 discrepancies, if they existed at all.

3 THE COURT: Okay. So they're questioning
4 her original processes in reaching the conclusion that
5 she couldn't succeed?

6 MS. KAWAJA: Correct.

7 THE COURT: But that the data -- the
8 underlying data was problematic.

9 MS. KAWAJA: Correct.

10 THE COURT: And another student had relied
11 upon that data; instead of reconfirming and re-doing all
12 those tests, he relied upon her data, which turned out
13 to be problematic.

14 MS. KAWAJA: He -- that requires a little
15 bit of technical knowledge.

16 THE COURT: Which I don't have.

17 MS. KAWAJA: This is about as much as I
18 can tell you. It took me a long time to get to this
19 point, Your Honor. For the graduate student, such as
20 our client, in creating her substance, she would perform
21 four tests, four different scientific tests to determine
22 and cross-reference each other and say, "Okay. Is this
23 the compound that I expected it to be?" She'll look at
24 the molecular weight, she'll look at the number of
25 carbon atoms, the number of hydrogen atoms, she'll even

1 look at it by x-ray or H-NMR records. There's multiple
2 ways to do it, but she had four methods that she used.
3 And that's what you do as a grad student when you're
4 trying to put a paper together.

5 The second post-doc who was reproducing
6 her work, he only did one of those tests, and when he
7 cross-referenced his H-NMR test as they call it, which
8 is magnetic resonance imaging, he compared it to her
9 results for the same test --

10 THE COURT: Uh-huh.

11 MS. KAWAJA: -- and they were -- they were
12 copacetic. He was fine. He didn't see any reason to
13 question what she had reported. So that's where we're
14 at with that.

15 THE COURT: Okay.

16 All right. Counsel, I guess I'm left with
17 a question as to how do you get around this 1969 AG
18 opinion that's currently being cited as authority that
19 UT has no authority to annul?

20 MR. PATTERSON: Just a couple points on
21 that, Your Honor, and after that if I could address some
22 other points.

23 THE COURT: Certainly, certainly. And I
24 know that we're a little bit all over the place, but
25 we're just going take it all together.

1 MR. PATTERSON: For the opinion, I mean,
2 just as a -- as a starter, I mean, it is an advisory
3 opinion --

4 THE COURT: Okay.

5 MR. PATTERSON: -- that was issued by our
6 office in 1969. In the 50 or 46 years since, there have
7 been cases, while not dealing with that specific
8 question, that did further the notion of what is
9 entitled to students in terms of due process, in terms
10 of discipline, in terms of expulsion, and those
11 questions. And looking --

12 THE COURT: Because those were their
13 students at the time.

14 MR. PATTERSON: Sure. I mean --

15 THE COURT: So there's -- there's some --
16 I presume there's some analysis of you -- you sign up,
17 you're a student and you are under the umbrella of the
18 University. But it seems that perhaps that relationship
19 changes after graduation and you have conferred
20 property, and as I'm understanding the AG's opinion at
21 least at that point was that you cannot later have that
22 type of control in relationship with the students that
23 no longer attend.

24 MR. PATTERSON: Well, in the question of
25 the conferred property, even the case law like the *Than*

1 case, which is, in Texas, the main case on this
2 question, that involved a medical student who was
3 currently at the time a medical student. There, he was
4 also considered to have a property right.

5 THE COURT: Okay.

6 MR. PATTERSON: A property right in his
7 diploma and in the name recognition in being a doctor,
8 and so I would argue the same analysis applies here.

9 THE COURT: So tell me which case that is.

10 MR. PATTERSON: The *Than* case, Your Honor.
11 It should be tabbed in my binder.

12 THE COURT: Yours is the white binder?

13 MR. PATTERSON: Yeah. I'm not -- it may
14 not -- I apologize. It may not be in the binder.

15 THE COURT: Okay.

16 MR. PATTERSON: It's not --

17 THE REPORTER: Are you saying T-h-a-n?

18 MR. PATTERSON: T-h-a-n.

19 THE REPORTER: Than.

20 MR. PATTERSON: It's a -- yeah, medical --
21 UT Medical Center, I believe.

22 THE COURT: Perhaps the blue?

23 MS. KAWAJA: I can get you a copy.

24 THE COURT: At least if someone could just
25 point me in the right direction. Oh, I see it. Tab 23.

1 MR. PATTERSON: 23.

2 THE COURT: Yes. Thank you.

3 MR. PATTERSON: So in that case, Your
4 Honor, the question was what process the student before
5 he was deprived of his property interest was entitled
6 to.

7 THE COURT: But he was a student, though,
8 at the time of this proceeding?

9 MR. PATTERSON: Yes, Your Honor.

10 THE COURT: Okay. Okay. So I see that
11 they promptly found there was no procedural due process.
12 Did we have a -- did he go through the same type of
13 committee review?

14 Okay. Yes?

15 MR. PATTERSON: There was a disciplinary
16 panel, and there the Court found no issue with the
17 actual panel or the committee or the form of process.

18 THE COURT: Okay.

19 MR. PATTERSON: There was something that
20 occurred near the end of the process where after there
21 was the hearing, the hearing officer right before
22 issuing the decision was allowed to see the site, the
23 classroom setting in which the student was alleged to
24 have cheated in.

25 THE COURT: Uh-huh.

1 MR. PATTERSON: The student wasn't allowed
2 to accompany the hearing officer. The Court felt that
3 because that happened right before an adverse
4 determination issue that a new hearing should take
5 place.

6 THE COURT: Okay.

7 MR. PATTERSON: There, the question,
8 though, was what hearing he was entitled to, not
9 precluding or interfering with the administration of a
10 hearing.

11 THE COURT: Due process. Okay. But a
12 little bit different because he was actually a student
13 at the time.

14 MR. PATTERSON: But in terms of the
15 opinion, Your Honor, all I can say is that it was under
16 the facts presented to the AG's office at the time in
17 1969 before there was further development in the student
18 due process period. And the only case law -- as
19 opposing counsel mentioned, there's not really any case
20 law in Texas, but we cited an Ohio case in our PTJ that
21 ruled -- that found that implicit in the right to confer
22 a degree is to -- to revoke it, because otherwise you're
23 requiring UT, despite its findings, to hold out as
24 someone to have been a successful graduate of their
25 program and to have performed all the requirements

1 necessary to be bestowed as a Ph.D., and that -- I find
2 no case law saying that UT is required or any university
3 is required to do that.

4 THE COURT: Well, and I -- I guess my
5 question is under -- under what authority? How does
6 UT -- I mean, could UT come back 20 years down the road
7 under the same statute and say, "We can -- we can take
8 away someone's medical license or their Ph.D. or their
9 or B.S."? Under -- under what authority do they have
10 the right to do that? Because I'm -- I'm seeing, even
11 with this case, a current student is availing himself
12 of -- of the benefits and the restrictions of the
13 University when they're a student, but under which
14 authority do they have to take something or at least go
15 through this process with someone who's not actually a
16 student? How do we get there? How do we get from
17 Point A to Point B?

18 MR. PATTERSON: Sure. I guess three
19 points on that. First, it would be implicit, again, in
20 the right of the University to bestow the degree to
21 determine after due process whether or not that degree
22 was falsely awarded. And they would have -- the
23 University has the right to determine for its own
24 recordkeeping purpose, at a minimum, whether or not that
25 degree was properly given.

1 And then, second, the courts in terms of
2 property interest tied to education, again,
3 unfortunately, there's little case law in degree
4 revocation. It doesn't seem to happen often, but --

5 THE COURT: Uh-huh.

6 MR. PATTERSON: -- in terms of property --

7 THE COURT: Which is good.

8 MR. PATTERSON: Yeah, which is good,
9 fortunately. The -- the requirement is due process, the
10 opportunity to be heard, to rebut evidence, all of which
11 are going to be and are being afforded to S.O. here.

12 THE COURT: Well, let me stop you there.
13 But this is -- this is where people typically find due
14 process and the state agencies have mechanisms and
15 processes in place to go through the underlying
16 administrative processes before getting here, and we
17 allow that because it's statutorily permitted that this
18 can be the appellate court as opposed to the starting
19 point. And so I'm trying to -- I'm trying to
20 synchronize this AG opinion, which I can -- I see that
21 they're -- you-all said at least at that point that this
22 falls outside of the umbrella of what a state agency can
23 do. So --

24 MR. PATTERSON: Well -- and again, I -- I
25 haven't had the opportunity to fully analyze that, Your

1 Honor.

2 THE COURT: And I want you to have that
3 opportunity and, I mean, I want -- I would like to get
4 the answer.

5 MR. PATTERSON: But it does conclude by
6 saying that it doesn't preclude the University, at the
7 very end of the opinion --

8 THE COURT: Okay.

9 MR. PATTERSON: -- from holding out that
10 it believes as a legal matter that that degree was
11 obtained fraudulently. Does that mean that the
12 University can internally change it's own records to
13 indicate that degree was not adequately bestowed --

14 THE COURT: Right.

15 MR. PATTERSON: -- without being able to
16 order the -- the recipient from holding him or herself
17 out as a recipient? I don't know the answer to that. I
18 do know that when courts have looked at property
19 interest tied to education in any realm --

20 THE COURT: Uh-huh.

21 MR. PATTERSON: -- it's about due process.
22 And the question isn't -- the question is whether or not
23 constitutional due process was provided. What is the
24 procedures that were afforded? S.O. -- part of opposing
25 counsel's argument contrasts the 2003 to the 2013

1 catalog.

2 THE COURT: Right.

3 MR. PATTERSON: Both catalogs say cheating
4 is wrong.

5 THE COURT: Right.

6 MR. PATTERSON: Both catalogs provide that
7 your degree can be revoked if it's -- if it's found that
8 you committed academic misconduct. Both catalogs --
9 while the newer one is the only one that affords the
10 student a panel, both of them provide -- provide for a
11 hearing officer, and so --

12 THE COURT: Can I see that catalog? Does
13 the language discuss timeframes or anything of that
14 nature or is it just a broad --

15 MR. PATTERSON: The catalogs, Your Honor,
16 are attached to my PTJ. Exhibit C is the 2013 catalog.

17 THE COURT: Oh, and here's -- here's where
18 I'm going with that. I mean, in our -- in the Rules of
19 Procedure there are statutes of limitation and there are
20 discovery rules, and so if those processes don't exist
21 for post-graduate students, those who are no longer
22 students at the University, then how -- how do they have
23 expectations of process? What benefit are they
24 receiving for having a limitation on their due process,
25 so not being able to come to court? What -- what are

1 they getting in return for this limitation of their due
2 process? Because it is in some ways a limitation,
3 because you-all are setting out, it's not our court,
4 it's not the typical form and fashion that someone would
5 come to seek rights. So what does it look like in the
6 catalog? What does it say? How long does UT get to
7 limit the due process or provide constraints to the due
8 process?

9 MR. PATTERSON: The catalog doesn't
10 contemplate a statute of limitations, but what the party
11 gets is she agreed to abide by rules in seeking out a
12 degree from UT, and one of those rules is don't cheat
13 and don't commit academic misconduct. The reward for --
14 or the -- what she was given in return was a Ph.D. --

15 THE COURT: Right.

16 MR. PATTERSON: -- that was believed at
17 the time to have been completed through -- properly
18 completed through the program and the rules in place at
19 the time. What UT is seeking to enforce now existed in
20 2003 and exists in the 2013 catalog, and it's that to
21 enforce the provisions that also apply to most -- people
22 that graduated that say that your -- the grounds for
23 disciplinary action and possibly for degree revocation,
24 which is also contemplated in both catalogs --

25 THE COURT: Okay. All right.

1 MR. PATTERSON: -- is whether or not you
2 committed academic misconduct. Those provisions exist
3 in both catalogs.

4 THE COURT: I saw the a little chart, but
5 can you hand me something more substantive? Is there --
6 does the catalog -- it states the punishment -- I guess
7 that's what --

8 MR. PATTERSON: Punishment section --

9 THE COURT: Punishment section --

10 MR. PATTERSON: -- for possible --

11 THE COURT: For academic dishonesty is,
12 but there's no timeframe for discovery or anything of
13 that nature?

14 MR. PATTERSON: It's only under 11 --
15 Section 11-700, Sanctions. It's -- it doesn't break it
16 down by type of misconduct determined, but it provides a
17 13-point list of possible sanctions, one of which, in
18 both catalogs, is degree revocation.

19 THE COURT: And does -- does that say
20 "student" or does it contemplate post-graduation or --

21 MR. PATTERSON: There's a section -- a
22 terminology section where the terms are defined, and --
23 I apologize, Your Honor, if you give me one second.

24 THE COURT: No problem.

25 MR. PATTERSON: Yes, under Section 11-300,

1 Subsection J, it defines student and it includes --
2 well, of course, it defines it as someone who is
3 currently enrolled, et cetera, et cetera.

4 THE COURT: Currently enrolled?

5 MR. PATTERSON: And it continues, "For the
6 purposes of this chapter, individuals who are not
7 currently enrolled at the University remain subject to
8 the disciplinary process for conduct that occurred while
9 they were enrolled."

10 THE COURT: Okay. All right. So that's
11 how you -- that's how you believe you're able to reach
12 out and grab outside of enrollment.

13 MR. PATTERSON: Right.

14 THE COURT: So let me ask you this. Is
15 there any mechanism or -- same question I asked
16 plaintiff's counsel is, so how could UT, if UT can,
17 initiate a proceeding in the District Court to revoke a
18 license? Is there any -- do you believe that UT has any
19 ability to do that through any other avenue?

20 MR. PATTERSON: I would only be
21 speculating, Your Honor. I have no -- that's not our --
22 our position is not that we would even need to do that
23 and I'm unaware of that being done, and so I couldn't
24 speculate to that. We are -- what we are doing is
25 enforcing the existing disciplinary process that

1 S.O. bound herself to when she was admitted, and we are
2 complying with the due process for a property interest
3 in education that's been set forth.

4 THE COURT: Okay. So tell me, under
5 11.501 is revocation an authorized disciplinary penalty?
6 Is it somewhere in the binders so I can look at it?

7 MR. PATTERSON: It's in my binder, Your
8 Honor, as Exhibit C for the 2013-'14 rules, Exhibit D
9 for the '03-'04 rules, and it's under -- the possible
10 sanctions are all provided under 11-700.

11 THE COURT: Okay. So I -- you've told me
12 where an ex-student can be subject, and then 11-700?

13 MR. PATTERSON: Yes, Your Honor, that's
14 the sanctions, the possible sanctions.

15 THE COURT: Okay. And No. 12 is
16 revocation of degree?

17 MR. PATTERSON: It is. Or -- yes.

18 THE COURT: Or withdrawal of diploma.

19 Okay. All right. Okay. Thank you.

20 Response?

21 MS. KAWAJA: Well, Your Honor, I think
22 you've honed in on the issue of their authority, and
23 they have only relied on implicit authority by citing
24 you a case from another jurisdiction that has a
25 potentially different statutory scheme, which really

1 shouldn't be persuasive here. The AG's opinion is what
2 should be controlling. I mean, I don't know how they
3 can say they're going to disregard their own opinion.
4 They haven't provided us any compelling reason to ignore
5 it.

6 With respect to the due process concerns,
7 you've raised all of the same issues that our client has
8 been raising herself, complaining about not receiving
9 documents, not receiving her own records, not having
10 access to any of the witnesses who they've been talking
11 to, so that she could explain herself. In their rules,
12 no scheme of their rules even addresses that, and our
13 position is this: As far as revocation goes, they don't
14 satisfy due process anywhere. I think, practically
15 speaking, because it has been such a rare situation --

16 THE COURT: Right.

17 MS. KAWAJA: -- that they haven't evolved
18 their rules to reach that point. I -- just sort of as a
19 side note, there's a lot of attention and press about
20 other -- like campus rape allegations, and so you can
21 see their rules as they evolve to address situations
22 like that, but it's not dealing with revocation. It's
23 almost as if revocation is an afterthought, and you can
24 read the AG opinion to say the Board of Regents can do
25 this in a court. They can decide if they want to revoke

1 the degree to do it in a court, and that's the only
2 place to protect somebody's property interest.

3 THE COURT: Well, and I can appreciate
4 that, I really can, but with a statutorily-provided
5 definition of the means and mechanisms of how the
6 student discipline and conduct rules are set forth, and
7 that it actually does specifically cite to post-graduate
8 students in that revocation is a clearly defined
9 proposed sanction. I think we have a different
10 scenario. I -- I would like to see some additional
11 briefing on this AG opinion and whether there's anything
12 in existence since 1969. The fact that it's still cited
13 certainly gives me some indication that it's relied
14 upon. I'm surprised this hasn't come up since 1969,
15 but --

16 MS. KAWAJA: I don't think anybody who's
17 been pursued as our client has, has had the means to be
18 able to defend themselves. And so here, all they've
19 talked about is implicit authority, but they have not
20 shown you, Your Honor, why revoking a degree is
21 necessary to carrying out their duty to award or confer
22 a degree.

23 THE COURT: I don't know that they have to
24 because they've shown me where they -- I mean, I walked
25 through that process because I need to know where they

1 get the authority to do what they're doing as an
2 administrative agency, and that's -- that's -- I'm
3 seeing that they have the authority. Unless there's
4 something out there that tells me that they don't, I
5 don't know if we can get any further.

6 MS. KAWAJA: Well, the Legislature
7 couldn't have given them that authority. These rules
8 that they've implemented only come from their original
9 grant of authority, and they are actually -- they have
10 the effect, unfortunately, of being statutes as well.

11 THE COURT: Uh-huh.

12 MS. KAWAJA: So we can't read into those
13 rules that power that they didn't already get. So they
14 haven't shown us why they can't just bring a suit over
15 breach of contract. Now, the rules don't talk about
16 evidentiary --

17 THE COURT: So it's a rules challenge.

18 MS. KAWAJA: A rules challenge?

19 THE COURT: You're challenging an
20 administrative rule then.

21 MS. KAWAJA: No. We're challenging their
22 authority to act under this rule, which would have the
23 equivalent of an administrative rule, but, yeah -- I
24 mean, there's two parts. Their authority doesn't exist.
25 If it does, the rules they have in place are

1 unconstitutional. So in that regard, yes, Your Honor.

2 THE COURT: So -- okay. You're
3 challenging the constitutionality of the rule that they
4 just pointed out to me provides their -- the due process
5 and the administrative process.

6 MS. KAWAJA: The student rules, yes,
7 absolutely.

8 THE COURT: Okay. All right. Well,
9 that's a little bit different than what I understood we
10 were coming in on, but --

11 MS. KAWAJA: But remember, Your Honor, you
12 don't get to that issue unless you think they have some
13 kind of authority to do what they're doing.

14 THE COURT: Well, and they've just shown
15 me where their authority is to do that. I mean, this is
16 the rule on which they're relying to provide their due
17 process, which they have codified, so to speak, in their
18 student rules.

19 MS. KAWAJA: They can't expand on -- I'm
20 sorry. They cannot expand the grant of their authority,
21 Your Honor. The grant of their authority is in those
22 statutes, and by -- if you were to accept that argument,
23 you would be enlarging their authority to do that.

24 THE COURT: They -- it would be a rule
25 challenge to challenge the constitutionality of the rule

1 that the University of Texas follows in administering
2 the implicit authority that they have in administrating
3 education in the State of Texas. So -- so if you're
4 challenging these rules, then it's a rules challenge and
5 we have to go to the constitutionality issue, and that
6 is different and I would want you-all to have an
7 opportunity to brief those issues.

8 I take this very seriously and I think the
9 process was lacking. There's no question. From what I
10 can see, it -- there's -- there's a lot of confusion and
11 there's clearly a question of someone losing their
12 professional livelihood, and so it's a serious question.
13 I want you-all to take very seriously the process and I
14 want you-all to have an opportunity to brief what's
15 happened since the AG's 1969 opinion, which stated that
16 the University acted -- as I'm understanding it -- *ultra*
17 *vires* in revoking the -- I don't know what type of
18 degree it was in that case.

19 MR. SERGI: Ph.D.

20 THE COURT: A what?

21 MR. SERGI: I believe it was a Ph.D.

22 THE COURT: A Ph.D., so similar. And when
23 these rules were codified, presumably since 1969, and if
24 there's any valid argument about the constitutionality
25 of these rules. If that's what we're hearing today, if

1 that's what the challenge is, then you-all need to take
2 some time to review it.

3 It certainly seems that there -- there is
4 a process in place, there is a means and a mechanism for
5 her to be able to challenge the revocation, and in the
6 event that she doesn't agree with what happened, she has
7 the ability to appeal to the president, and then to come
8 to us, and we would look at the entire record. But I
9 also take very seriously the questions as to whether or
10 not that is true due process for someone who's no longer
11 a student at the University. And so for that, I will --
12 I will review any question as to whether or not these
13 rules are constitutional as to a post-graduate student.
14 The rules are there. It says that they can reach out
15 and grab someone who's already been provided a diploma.
16 So it's a rule challenge as I'm seeing it, unless
17 you-all tell me something different. It sounds like a
18 question as to whether or not that is constitutional or
19 not. Okay?

20 MR. SERGI: And, Your Honor, if I can just
21 briefly address that point.

22 THE COURT: Yes.

23 MR. SERGI: We also have evidence to
24 present through Dr. Magnus who was actually on the
25 original dissertation committee and sent a letter

1 indicating his displeasure with this entire process to
2 the Dean when asked to participate further that will
3 show that, for example, having undergraduates hear this
4 kind of challenge involving this type of chemistry is
5 close to ludicrous.

6 THE COURT: Okay. But let's go to --
7 first of all, that is contained within the rules,
8 correct? I assume that that's how the committee is
9 structured in the rules?

10 MR. PATTERSON: It is. The student --

11 THE COURT: And that is the mechanism, the
12 form that she selected. Whether or not she did it over
13 objection, she -- she could have gone directly to the
14 hearing officer?

15 MR. SERGI: Yeah, but the thing is that
16 she was misinformed as to the applicable rules, and if
17 you go back to the rule as it was in effect in 2003,
18 there are no -- there are no undergraduates that could
19 hear this. There would be a hearing officer. Now, we
20 frankly believe that this is very close to tenure
21 litigation where you're taking away that property
22 interest, and I would show that the University's rules
23 require faculty of similar stature, of similar rank.

24 THE COURT: Okay. But she's made those
25 objections and so those objections could be considered

1 on appeal, correct?

2 MR. PATTERSON: Yes, Your Honor.

3 THE COURT: Okay. So there's --
4 there's -- due process in this Court, in due time, would
5 have the ability to review the objections and the
6 responses to those objections pertaining to the
7 composition of the committee or whether that was true
8 due process or not. But that seems -- that goes back to
9 the ripeness issue. We're not quite there yet.

10 MR. SERGI: But the problem with the
11 ripeness issue is this. We are looking at a hearing
12 that'll be conducted by undergraduates that -- and I can
13 show you the video that they gave us of what this
14 process actually looks like and it looks nothing like
15 the process -- and I'll be frank, we're involved in a --
16 Ms. Colmenero and I are involved in another very similar
17 matter at Texas State, and I would proffer that at Texas
18 State we had a panel of university professors of similar
19 rank that were in the same general area that made those
20 determinations. And while we believe there are problems
21 there, too, and I would not concede that that even was
22 proper, one of the issues we had in that case was for
23 the ad hoc rules that were being made.

24 THE COURT: All right. But at the end of
25 the day, that's the manner in which your client agreed

1 to -- to be a student, to subject herself to the rules
2 of the University in order to get the exchange of
3 receiving a diploma at the end, and --

4 MR. SERGI: But even there we never --
5 that was not an option under the rules when she entered
6 the University.

7 THE COURT: What was not an option?

8 MR. SERGI: A student panel. That student
9 panel is a creation -- a much more recent creation.

10 THE COURT: Okay.

11 MR. PATTERSON: That's -- that's correct,
12 Your Honor --

13 THE COURT: Okay.

14 MR. PATTERSON: -- but she is still
15 availing herself -- she could -- plaintiff could choose
16 to go with a hearing officer under both catalogs.

17 THE COURT: Okay. So --

18 MR. PATTERSON: She availed herself of the
19 student council -- student panel that's provided for in
20 the newer catalog. Plaintiff was sent a copy of the
21 catalog that's controlling by my predecessor in February
22 2014. So for two years now she's been -- she and her
23 attorney at the time had a copy of the catalog that
24 would control. I'm not sure I understand what
25 plaintiff's objection is in that regard insofar as if

1 plaintiff doesn't want a student panel, she can still
2 avail herself of the hearing officer.

3 THE COURT: Even at this point?

4 MR. PATTERSON: When I spoke -- I would
5 need to confirm it. When I spoke last week, it was
6 quoted that if that's really her objection, that could
7 probably be accommodated, but I would want to confirm
8 that with UT before I make that representation.

9 THE COURT: Right. Well, I mean, it's not
10 technically before me, but why -- why not have --
11 without waiving your right to appeal, of course, but
12 have some communication about the composition? I can
13 see where there would be some pause about having
14 undergraduate students reviewing -- am I correct, there
15 were undergraduate students who are contained on the
16 committee to review the revocation of a Ph.D.? It seems
17 a little counterintuitive.

18 MR. PATTERSON: May I address that issue
19 for a moment --

20 THE COURT: Certainly.

21 MR. PATTERSON: -- Your Honor, because
22 that -- that is a separate issue plaintiff raised. In
23 terms of the composition question, a few points. No. 1,
24 UT's argument here is this isn't a scientifically
25 complicated matter. The question that will be before

1 this panel is whether or not plaintiff modified raw data
2 into what the graphs turned out to be, the spectra, and
3 that there was a discrepancy between that. Both sides,
4 as in any hearing, will have the opportunity to present
5 experts, witnesses of their choice to cross-examine.
6 That's all provided for under the rules, and so --

7 THE COURT: Do the rules permit the
8 plaintiff the ability to depose or otherwise question or
9 contact the witnesses that UT will be calling?

10 MR. PATTERSON: I believe it is ten days
11 ahead of time that the plaintiff is provided a copy of
12 the list of the possible witnesses, and on the notice
13 that went out for the hearing, it did list potential
14 witnesses. I'm not aware of anything precluding her
15 from contacting them. I don't know that the rules say
16 she affirmatively may. So I'm not aware that -- if
17 she's given the names of the person, I'm not aware of
18 anything preventing her from doing so.

19 THE COURT: And she has the ability at the
20 time of the hearing to cross-examine those witnesses?

21 MR. PATTERSON: Yes, Your Honor.

22 THE COURT: Okay.

23 MR. PATTERSON: And a week ahead of time,
24 plaintiff is provided electronically a link to the
25 exhibits that will be considered by the hearing panel so

1 there aren't surprises in terms of what the committee
2 would actually be exposed to. At the time of the
3 hearing, plaintiff can then object to exhibits if she
4 believes that they're improper or --

5 THE COURT: Well, it's interesting,
6 because I would -- I would presume that having students
7 on the panel is typically of a benefit to the student,
8 and here we have the student who is protesting the lack
9 of knowledge, I suppose, of these particular students.
10 I would think that they're looking for -- she's looking
11 for a peer, similar to a jury, to have a committee of
12 her peers, and here we don't have peers, but we have
13 some sort of -- even though the questions that you're
14 saying led to the University's decision to implement
15 this process, there is some -- there are some -- there
16 is a technical nature to what I presume will be
17 presented as evidence.

18 MR. PATTERSON: There is a technical
19 issue, Your Honor. In terms of the case law, I haven't
20 found or seen anything saying that this is a particular
21 issue, but I will say this, in the criminal realm, we
22 have juries that hear complicated evidence, DNA
23 evidence.

24 THE COURT: Uh-huh.

25 MR. PATTERSON: And jurors that sometimes

1 may have a high school diploma, may have higher, may
2 have lower, and they make life or death decisions, and
3 there's no higher liberty interest than someone's life.
4 And in this state we have capital punishment decisions
5 that come down in those scenarios, and so I don't see
6 where -- here where the issue -- I would argue is lower,
7 it's a property interest, but it's not her life or limb
8 that a -- I don't see a basis in law for challenging
9 whether a student panel that she chose to have can hear
10 from ex -- can hear from witnesses explaining why this
11 evidence, these exhibits, demonstrate wrongdoing.

12 THE COURT: What's the standard of review
13 at this hearing? Is it a preponderance of evidence or
14 clear and convincing?

15 MR. PATTERSON: I believe -- I believe it
16 is a preponderance of the evidence.

17 THE COURT: Do they know? Are they -- are
18 they communicated what the standard is and --

19 MR. PATTERSON: I know -- I just know what
20 the evidence --

21 THE COURT: Is it a majority decision or
22 does it have to be unanimous? I mean, do they know the
23 rules?

24 MR. PATTERSON: That is set forth in
25 the -- in the rules, Your Honor -- in the catalog.

1 THE COURT: It's all set forth in the
2 catalog.

3 MR. PATTERSON: I believe so, Your Honor,
4 yes.

5 THE COURT: Okay. Okay.

6 MR. SERGI: May I address real quick?

7 THE COURT: You may, yes.

8 MR. SERGI: First of all, having litigated
9 several capital cases, I think we all know the
10 heightened scrutiny that a capital case gets. We in the
11 criminal realm have detailed discovery, Brady material,
12 and none of that, none of that has happened here. We
13 have been asking for the evidence that they have for
14 literally years. Not until ten days before the hearing
15 are we graced with the evidence and it is very detailed
16 evidence.

17 THE COURT: To this date as you stand here
18 you still don't have those materials?

19 MR. SERGI: No, we do not -- we have not
20 been provided those materials. We have asked for her
21 records. We have asked for -- and my predecessor has
22 asked for detailed information. Haven't got it, and
23 that's part of the problem. They expect my client, who
24 is not a trained lawyer, to defend herself without
25 counsel being able to participate in the hearing.

1 THE COURT: You cannot participate in the
2 hearing?

3 MR. SERGI: I cannot participate in the
4 hearing under the rules. We are advisors but we cannot
5 ask questions.

6 MS. KAWAJA: Only one.

7 MR. SERGI: Huh?

8 MS. KAWAJA: And only one.

9 MR. SERGI: And only one. And so we have
10 a real problem with that.

11 THE COURT: Well, I mean, there is --
12 there is a challenge, too, because as the appellate body
13 to these administrative appeals, all I would get or any
14 of us would get is the record, and so there certainly
15 are limitations to receiving it on appeal.

16 MR. PATTERSON: Could I bring -- I'd like
17 to point out two things regarding opposing counsel's
18 comments. The point of student disciplinary proceedings
19 is supposed to be that they're not formal judicial
20 proceedings.

21 THE COURT: Right.

22 MR. PATTERSON: And so in, like, the *Than*
23 case and in other cases dealing with protected interest
24 in a diploma, I understand it was a current student, but
25 still the Court there held that -- had noted

1 periodically that sometimes these universities are
2 giving more process than is -- than is due. The -- the
3 point of the process is whether or not -- for example
4 regarding the adjudicator, whether or not the
5 adjudicator had any actual bias demonstrated in the
6 record, and, of course, there can't be a record until
7 there's a record.

8 THE COURT: Well, that deals with
9 Professor Lungwitz, but --

10 MR. PATTERSON: Right.

11 THE COURT: -- what about the lack of
12 ability to have counsel present, the lack of ability to
13 have a timely production of evidence, the ability to
14 contact the witnesses that UT is planning to call or to
15 see the evidence that is -- UT plans to use against --

16 MR. PATTERSON: We're providing those,
17 Your Honor. The -- the --

18 THE COURT: Just a moment. You'll have --
19 you'll have an opportunity in just a second. Let me --

20 MR. PATTERSON: UT under the rules will
21 provide five days -- at least five days' notice of any
22 exhibits that are going to be used. Counsel will be
23 present. Yes, we don't allow like a team of --
24 apparently there's not an unlimited number of attorneys
25 allowed to be present, but one is permitted to be there

1 as an advisor, which is permissible under -- at least
2 under the student disciplinary case law that's been set
3 forth, and she will have the opportunity to
4 cross-examine, to present her own evidence, to present
5 her own witnesses. If she has an expert, for example,
6 she'd like to present to explain to the panel why the
7 University's exhibits and demonstrated evidence does not
8 demonstrate she committed wrongdoing, she'll have that
9 opportunity.

10 But just to return, Your Honor, to what
11 the real issue here is, if they're -- if plaintiff
12 believes that the process that will be afforded to her
13 is improper, insufficient --

14 THE COURT: Uh-huh.

15 MR. PATTERSON: -- the time to bring that
16 up is when there's a record. It's still -- there's no
17 demonstration of imminent harm because it's still
18 speculative of what the student panel will even find --

19 THE COURT: Uh-huh.

20 MR. PATTERSON: -- and so that's an
21 unknown. And so we can keep going over, you know,
22 whether or not there's concerns about aspects of the --
23 of what will be the record, but there's still not a
24 record for the consideration of any court --

25 THE COURT: Okay.

1 MR. PATTERSON: -- or for the president
2 during the appeal that's set forth in the process by the
3 University. So we just -- we argue that we're not
4 dealing with an imminent harm that's presenting itself
5 and we don't have a record to review. The proper time
6 for the plaintiffs to raise these issues, if they turn
7 out to be issues and plaintiff loses in these
8 proceedings, is at the conclusion of her rights as set
9 forth under the University policy.

10 THE COURT: Okay. Thank you very much.
11 Response?

12 MR. SERGI: Well, one thing that comes to
13 mind is we have ten days. We tried to subpoena a
14 witness to this hearing today, and from -- I'll just
15 proffer what I understand from our process server. It
16 would be apparent that the lady was at home and refused
17 to come out and accept the subpoena. So we have real
18 issues with the -- our ability to contact witnesses. I
19 know Dr. Martin certainly won't speak to us.

20 THE COURT: Uh-huh.

21 MR. SERGI: I will also say that the -- we
22 still don't know who the minority member was on the
23 original scientific misconduct review committee that
24 wrote a very compelling, in our opinion, dissent that
25 says this really doesn't matter and laid out why there

1 was no harm to begin with in what happened, that it was
2 simple negligence. And I think it makes the point that
3 if this indeed were the standard, most degrees could be
4 revoked if there were a minor mistake. And so we don't
5 even know who that person is. So we can't even contact
6 that person. All we have is a memo that contains that
7 minority report, and the thing about this is -- you
8 know, Your Honor, I'm the national president of a
9 fraternity. I deal with student conduct issues all the
10 time at universities around the country, especially in
11 light of Safe Campus, Title IX, many of the issues that
12 you will be seeing here.

13 THE COURT: Uh-huh.

14 MR. SERGI: And the issue is that the
15 amount of process really depends on what you're trying
16 to take away. If this is, you know, "You stole
17 something from another dorm," you -- you know, something
18 relatively minor, minor criminal offense, "you smoked
19 pot in the dorm," there is a more minimal amount of
20 process. But when you are allowing a panel of
21 undergraduate students to make a decision that can
22 remove a property and a liberty interest in her degree,
23 there has to be far more process, and that's the problem
24 we have. There is really no process other than
25 something designed for usually minor infractions, and

1 when you look at the range of sanctions, really the only
2 sanction they could be going for is revocation. And so
3 at the end of the day, we're -- what I see here is a
4 process that is designed for undergraduates being
5 applied retrospectively --

6 THE COURT: Uh-huh.

7 MR. SERGI: -- to a graduate student with
8 a degree with far more to lose. And so that's where our
9 challenge -- and we have Dr. Magnus here to testify in
10 detail about the problems of this panel.

11 THE COURT: Okay. Let's take a
12 seven-minute break and then I'll hear any evidence you'd
13 like to present with regard to the injunctive request
14 for relief. Do y'all have any witnesses?

15 MR. PATTERSON: None that we're calling.

16 THE COURT: Okay. All right. Thank you.
17 We'll take a quick break. When it's 10:30, come back.

18 (Recess taken)

19 THE COURT: All right. You-all ready to
20 proceed?

21 MR. PATTERSON: We are.

22 THE COURT: Okay.

23 MR. PATTERSON: May I make one notation,
24 Your Honor?

25 THE COURT: Yes.

1 MR. PATTERSON: I've conferred with UT
2 and, just for the record, they've confirmed that if --
3 if S.O. wants she can still proceed with just the
4 hearing officer --

5 THE COURT: Okay.

6 MR. PATTERSON: -- and for the March 4th
7 date, but just wanted to make that representation clear.

8 THE COURT: Just so that y'all know.

9 MR. SERGI: Your Honor, a couple of
10 issues. Number one, we'd like to know who it is, their
11 qualifications --

12 THE COURT: Uh-huh.

13 MR. SERGI: -- are they trained chemists
14 or not?

15 THE COURT: Okay. What is the procedure
16 for the selection of the hearing officer? Is the list
17 available? Is there -- will plaintiff know in advance
18 who that will be?

19 MR. PATTERSON: It would be Professor
20 Lungwitz.

21 THE COURT: Okay.

22 MR. SERGI: Wait, Your Honor. I'm sorry.
23 Your Honor, we would have a real problem with that
24 because, number one, she has -- number one, she has
25 already indicated a bias in ignoring the rules that -- I

1 mean, the case law that says that this is a contract and
2 the 2003 catalog applies. We would have no problem with
3 somebody from the chemistry department, somebody who has
4 the same breadth, but to have a family law lawyer, Your
5 Honor, who has already ignored clear and unambiguous
6 case law, we would have a problem. So we would prefer
7 to have a different individual appointed.

8 THE COURT: Well, let me ask you this,
9 because I did note that this particular professor,
10 her -- as I'm understanding it in the very brief review,
11 her husband was solicited by plaintiff to be the
12 attorney in this case. So there appears to be at least
13 an appearance of some potential conflict. So is there
14 not another person who could serve in that capacity?

15 MR. PATTERSON: Under the rule -- she's
16 drawn from a pool, Your Honor, of people --

17 THE COURT: Okay.

18 MR. PATTERSON: -- and it's first come,
19 first served, first response. But in terms of that, the
20 rules provide for what the authority of the hearing
21 officer is and that they will themselves hear challenges
22 to their authority, that becomes -- if S.O. makes that
23 on the record March 4th, either way, either she goes
24 with the panel or the hearing officer, that will be part
25 of the record that can be appealed, presuming she

1 appeals.

2 THE COURT: Well, why -- why go through
3 all of that if there is a potential issue of conflict?
4 Why not just go to the next person on the list? You are
5 already aware that there is a concern about a possible
6 conflict of which that person is making the decision,
7 not dissimilar to the process that we undergo, but when
8 there is a potential conflict, we tend to err on the
9 side of caution and just to avoid any appearance of
10 impropriety.

11 MR. PATTERSON: I can only say two points
12 on that, Your Honor. The first is the University is
13 following its own procedures that are set forth, that
14 would be a detour from those procedures; and, two, they
15 have to show actual bias in the record to show that
16 there is a conflict and that --

17 THE COURT: That doesn't really answer my
18 question, though.

19 MR. PATTERSON: I understand, and I don't
20 have an answer for -- other than the rules provide the
21 process that's being followed in terms of how one
22 challenges a hearing officer, and that would be a detour
23 from those rules.

24 THE COURT: Well, I would like to avoid
25 getting in a situation where we're simply reviewing bad

1 decisions along the way --

2 MR. PATTERSON: I apologize --

3 THE COURT: -- on appeal. Uh-huh.

4 MR. PATTERSON: I'm sorry. I'm -- we --
5 I'm sorry. I'm just being advised by UT that they would
6 provide for another professor. We are not going to
7 stipulate based on profession, you know.

8 THE COURT: Right.

9 MR. PATTERSON: It would be based on
10 whether there's an actual conflict demonstrated or
11 claimed, but we will allow for another professor.

12 THE COURT: Okay. So this would be
13 someone other than the person about whom there was a
14 concern and so it would go to the next professor on the
15 list. Is that --

16 MR. PATTERSON: Right.

17 THE COURT: -- is that my understanding?

18 MR. PATTERSON: Right. Or as my
19 understanding is another e-mail or something would be
20 circulated to the people in the pool, first response,
21 first come, basically, sort of thing.

22 THE COURT: Okay. So that's the procedure
23 that you could use for the selection of a hearing
24 officer.

25 MR. PATTERSON: That's how it's been

1 explained.

2 THE COURT: Okay.

3 MR. PATTERSON: Because it's based on
4 their availability.

5 THE COURT: Okay. So Professor Lungwitz
6 would not be the professor who would be hearing this --
7 are you handing me something?

8 MR. SERGI: We're going to be handing you
9 something. We're just getting ready for the next part
10 of this.

11 THE COURT: Okay. All right. You-all
12 ready to proceed then on the injunctive relief?

13 MR. SERGI: Yes.

14 THE COURT: Okay.

15 MR. SERGI: Your Honor, we've had a
16 discussion with opposing counsel. What we'd like to do
17 is start this process by using Exhibit 2, which is a
18 video from an e-mail that was sent to my client along
19 with the charges which explain the process of -- that
20 she'll be undergoing. It's a very brief two-minute
21 video.

22 THE COURT: Okay.

23 MR. SERGI: And we tendered --

24 THE COURT: Are -- are you prepared at
25 this point to make a determination as to whether or not

1 your client would select a hearing officer that is not
2 Professor Lungwitz about whom you've had a prior
3 objection as opposed to the committee review?

4 MR. SERGI: Yes, Your Honor.

5 THE COURT: Okay. And your decision would
6 be what?

7 MR. SERGI: We would want a hearing
8 officer.

9 THE COURT: Okay. The next person on the
10 list?

11 MR. SERGI: Yes.

12 THE COURT: Okay. So does this --

13 MR. SERGI: Without waiving any --

14 THE COURT: -- pertain to --

15 MR. SERGI: Without waiving our challenge
16 to the rules because there's still other issues that --

17 THE COURT: That's understood.
18 Understood.

19 MR. SERGI: Okay.

20 THE COURT: And this pertains to a hearing
21 officer review?

22 MS. KAWAJA: This is a video of a sample
23 hearing that she's supposed to go through.

24 THE COURT: Okay.

25 MS. KAWAJA: They sent this to her by

1 e-mail about two weeks ago.

2 THE COURT: Do you have a copy?

3 MR. PATTERSON: I do not.

4 THE COURT: Okay.

5 MR. PATTERSON: Oh, just a question. Is
6 this the student panel or the hearing officer?

7 THE COURT: Well, that --

8 MR. SERGI: That was actually --
9 actually -- actually, that is actually the student
10 panel --

11 THE COURT: Yes.

12 MR. SERGI: -- and we've now resolved
13 that. So I think we probably need to move on.

14 THE COURT: That was what I was getting
15 at.

16 MR. SERGI: The other thing is we don't
17 have a copy of what -- I'm assuming they have the same
18 thing for a hearing officer. So we haven't actually
19 received that video.

20 THE COURT: Okay. Okay.

21 MR. SERGI: So I guess I --

22 THE COURT: So this wouldn't be relevant
23 to this proceeding. So --

24 MR. SERGI: Not really.

25 THE COURT: -- we'll move on to your

1 evidence.

2 MS. KAWAJA: Note that the fact that
3 they're making up their processes as they go and as we
4 sit here in court demonstrate the deficiencies in -- in
5 the ad hoc methods that have been employed for the last
6 four years. So --

7 MR. SERGI: I'd like to go ahead and call
8 Dr. Magnus to the stand.

9 THE COURT: Okay. Dr. Magnus, you may
10 come forward. If you'll come up to the witness stand,
11 I'll swear you in. Good morning.

12 THE WITNESS: Good morning.

13 (Witness sworn)

14 THE COURT: The microphone should be about
15 two to three inches from your mouth and it is movable,
16 pliable, so you can adjust it as needed.

17 **PHILIP MAGNUS, Ph.D.,**

18 having been first duly sworn, testified as follows:

19 **DIRECT EXAMINATION**

20 BY MR. SERGI:

21 Q. Would you please state your name for the
22 record.

23 A. It's Philip Magnus.

24 Q. And would you briefly tell the Judge your
25 educational background.

1 A. I won't start from the beginning because it'll
2 take too long, but my university educational background
3 is I was an undergraduate at the Imperial College London
4 and received my bachelor's degree in 1964.

5 Q. And what was that in, sir?

6 A. That was in chemistry.

7 Q. And briefly tell the Judge the rest of your
8 academic educational qualifications.

9 A. Yes. Once I got my bachelor's degree, I was
10 appointed onto the faculty as an assistant lecturer and
11 I proceeded to do my Ph.D. work for three years under
12 the direction of Sir Derek Barton, who was a Noble --

13 THE REPORTER: Can you -- can you say the
14 name again?

15 THE WITNESS: Derek Barton.

16 THE REPORTER: Eric Barton?

17 THE WITNESS: Derek.

18 THE REPORTER: Derek.

19 THE WITNESS: Yeah -- who was a -- excuse
20 me -- who was a Nobel Prize lawyer. I got my Ph.D. in
21 19 -- 1968, continued on the faculty at Imperial College
22 for tenure until 1975, and then I was made an offer from
23 Ohio State University in Columbus, Ohio and moved, I
24 could tell you precisely, on September the 1st, 1975 to
25 Ohio and continued both teaching and research. I stayed

1 at Ohio State, I think, for about six or seven years and
2 then moved to Indiana University Bloomington, where I
3 also continued teaching and research and became a
4 distinguished professor there.

5 Then, having sort of been in the Midwest
6 for maybe too long, I was attracted to the warmer
7 climate south, and I was made an offer of a Welch Chair.
8 This would have been about 1988. I accepted the Welch
9 Chair and moved to University of Texas Austin, started
10 my position first of January 1989.

11 Q. (BY MR. SERGI) What -- what is your current
12 title at the University of Texas at Austin?

13 A. Welch professor.

14 Q. And are you also an emeritus chemistry
15 professor?

16 A. Yes.

17 Q. And what are your areas of specialization?

18 A. Major broad area specialties, organic synthesis
19 and organic chemistry, particularly natural products,
20 both the synthesis of natural products and mechanisms of
21 how they work, and in general trying to find out new
22 information about chemistry.

23 Q. Now, is Dr. Martin a colleague of yours?

24 A. Yes.

25 Q. And how long have you known Dr. Martin?

1 A. I've known him in the 25 or so years I've been
2 at UT and I met him before coming to UT, I believe, at a
3 meeting -- American Chemical Society meeting in Houston
4 probably, I would say late -- mid-1980s, roughly.

5 THE REPORTER: '80s or '90s?

6 THE WITNESS: '80s.

7 THE REPORTER: Thank you.

8 Q. (BY MR. SERGI) Now, whilst at the University
9 of Texas at Austin, have you been involved with
10 committees that approve or disapprove the granting of a
11 Ph.D.?

12 A. Yes.

13 Q. And whilst at the University of Texas at
14 Austin, have you published papers?

15 A. Yes.

16 Q. And approximately how many papers do you think
17 you've published in your lifetime?

18 A. Say about 320.

19 Q. And do you have a particular style that you use
20 in teaching and how you run your lab?

21 A. Yes.

22 Q. And what is that?

23 A. Overall, I would describe myself as a very
24 hands-on teacher and research supervisor, and the simple
25 philosophy is they should gain from my experience and

1 how to think critically about problems. I would go and
2 see my students on a day-to-day basis, find out what's
3 going on, and I would never pressurize them. I think if
4 you pressurize students to get the so-called results you
5 want, which is prevalent in the current scientific
6 environment, partly the pressure of grants and all the
7 so-called publish or perish, I've told them if that
8 problem exists, I'm the one that absorbs those sort of
9 threats, if you like. That's maybe not the -- quite the
10 right word to use, but I would tell them also I'm not
11 looking for a particular result. I'm looking to find
12 out what happens. It may be something that is
13 predictable. Usually it's better if it's not
14 predictable, because if it's predictable, it's only
15 predicted within the range of my knowledge, which of
16 course is restricted. But if it is something, a real
17 surprise, that's much more exciting, and just let's find
18 out what goes on, and that can be more difficult than it
19 seems at first sight.

20 In other words, my role in interpreting
21 data and training students how to do that is -- they
22 have to be critical. They can't -- don't necessarily go
23 for the first thing that jumps into your head. Look at
24 all the problems that exist.

25 Q. Now, are you familiar with how Dr. Martin runs

1 his lab from your observation, not what he said, but
2 just how he runs his lab?

3 A. Yes.

4 Q. And how does Dr. Martin run his lab?

5 A. He's very much hands-off. Students write, I
6 think, papers, at least a draft to it, which is
7 something I never do. I always write my own papers,
8 partly -- I would write posthumously to think that if my
9 papers are read when I'm no longer here, that at least
10 the people will be reading what I wrote and not somebody
11 else's work. Also, it has the -- I've noticed Steve's
12 would have the philosophy of the students have to work
13 everything out themselves. In fact, it almost became a
14 joke to some extent that the students had a T-shirt
15 which had emblazoned on the front of it, "Go away and
16 think about it," which was his response if they asked
17 him a question.

18 Q. Now, approximately how long have you known
19 Ms. S.O., who is the subject of this hearing?

20 A. I would have met her --

21 Q. And please only use her -- "her" or a generic
22 term, S.O.

23 A. Can we use "her"?

24 THE COURT: And I'm going to actually ask
25 just for the record, I know there is another student's

1 work involved and although there may not be a current
2 existing request of anonymity, I would request for the
3 purposes of the remainder of this hearing that that
4 person's identity also be limited to initials as well.

5 MR. SERGI: Yes, Your Honor, and we have
6 no problem if the court reporter wants to go back and
7 strike counsel -- opposing counsel's reference to an
8 individual or any reference we made to another
9 individual.

10 THE COURT: Very good. Any -- any
11 objection?

12 MR. PATTERSON: No, Judge.

13 MR. SERGI: That's fine. Just use the
14 initials. Okay.

15 THE COURT: Thank you.

16 THE WITNESS: Sure, but I hadn't answered
17 the question as of yet.

18 Q. (BY MR. SERGI) Yes.

19 A. I would have first met S.O. when she joined the
20 graduate program, which I think was 2003 or somewhere --
21 I don't keep written down records of these sorts of
22 things. Of course, always in retrospect, I wish I had
23 them, but I didn't.

24 Q. And over the time that S.O. was at UT, did you
25 have other interactions with her?

1 A. Yes.

2 Q. And what were the general nature of those
3 interactions?

4 A. She would be seeking advice, asking me chemical
5 questions, they might be what I would say broadly
6 strategic ways of approaching problems and there might
7 be interpretations of data or just is there a good way
8 of doing something, just general advice, and I think the
9 Martin group, many of his students talked to me quite a
10 lot actually, and I enjoy talking to students partly
11 because sitting in an office all on your own all day
12 wondering what you're going to do next, it's a very nice
13 break from writing papers.

14 Q. Now, why did you volunteer to talk to us and
15 testify in this case?

16 A. I was -- background. My interactions with S.O.
17 and the other students in the Martin group were always
18 extremely positive. Mart -- Steve always had very good
19 students, some of which I -- were working for me, but
20 they were very outstanding students. So when I was
21 first aware that there was some problem with S.O.'s
22 dissertation, I was extremely surprised. I read that
23 dissertation as a member of her committee and there were
24 no problems in it what -- whatsoever, and so I was very
25 surprised, and so I immediately felt that some -- for

1 want of a better word -- misunderstanding going on and
2 that I felt that anything I could do to help would be a
3 positive thing to do.

4 Q. Okay. What did you understand the issue to be
5 in S.O.'s case that she is being accused of now?

6 MR. PATTERSON: Your Honor, I'd like to go
7 ahead and lodge an objection under Rule 402. I'm not
8 clear what the relevance of this line of questioning and
9 testimony is in terms of the process that S.O. is being
10 afforded and how it goes to the question of imminent
11 harm or likelihood of success on the merits, and so to
12 that extent I would object to further questioning in
13 this regard.

14 THE COURT: Response?

15 MR. SERGI: Your Honor, I think I'm just
16 trying to lay some background of his qualifications, his
17 interactions and what the issue was, and then there's a
18 letter that he has presented, which is going to be my
19 next exhibit. So I'm laying the predicate foundation
20 for that. So for the limited purpose of laying the
21 predicate foundation, I would like to have him -- ask
22 that question because otherwise, I'll be going through
23 numerous letters that he might have seen.

24 THE COURT: Okay. I'll allow a little bit
25 more to get to the relevance of the testimony.

1 MR. SERGI: Sure.

2 Q. (BY MR. SERGI) Briefly, do you understand what
3 S.O. is being accused of?

4 A. Yes.

5 Q. And briefly what is that?

6 A. My understanding that she's being accused of
7 altering some NMR spectra compounds. That's --

8 THE COURT: What type of spectra
9 compounds?

10 THE WITNESS: It would be nuclear magnetic
11 resonance spectra.

12 Q. (BY MR. SERGI) And did you review her
13 dissertation to look at what Dr. Martin has alleged was
14 an impropriety?

15 A. I'm understanding that -- did I review her
16 dissertation to look whether I could see anything in
17 the -- in that that specifically was what Dr. Martin
18 alleged?

19 Q. Yeah.

20 A. Basically -- the answer to that is yes, I did,
21 and I've never really been able to find any evidence for
22 that.

23 Q. Now, were you asked to participate in a
24 committee that reviewed these allegations at the very
25 outset of this back in 2013?

1 A. Yes.

2 Q. Explain to the Judge briefly what committee you
3 were asked to be a member of?

4 A. I believe it was a committee to initially
5 review the allegations. That's -- that's all I know.

6 Q. And did you, in fact, decline --

7 A. Yes, I did.

8 Q. -- to participate? And why did you decline to
9 participate?

10 A. Because they wouldn't tell me really what it
11 was about. They wanted me to essentially go over to the
12 Tower presumably and see data or information. I wanted
13 to know what's going on and I was not told that, so I
14 declined but with the proviso that I could write a
15 letter, which I did, to explain my reasons.

16 MR. SERGI: Your Honor, I would ask that
17 he -- we have Exhibit 1 that is -- the court reporter
18 has it, and I would indicate -- also indicate we have
19 not redacted that copy, so we'll need to go back and
20 redact it.

21 THE COURT: Okay.

22 Q. (BY MR. SERGI) I'm going to show you what's
23 been marked as Exhibit 1.

24 THE COURT: Counsel, do you have a copy?

25 MR. PATTERSON: No, I don't.

1 MR. SERGI: Actually, I'm going to provide
2 him with one right now.

3 Q. (BY MR. SERGI) Can you identify that document?

4 A. Yes.

5 Q. And tell the Judge what --

6 THE COURT: Do you have an extra copy for
7 the Court?

8 MR. SERGI: Oh, sorry.

9 THE COURT: Thank you.

10 Q. (BY MR. SERGI) Is that a true and correct copy
11 of a letter that you sent to Dean Langlois on or about
12 the 21st day of August (sic) 2013?

13 A. It is.

14 Q. And does that summarize your thoughts regarding
15 your participation in the panel that you just testified
16 about?

17 A. Yes, it is.

18 MR. SERGI: Your Honor, I'd move to admit
19 Exhibit No. 1.

20 THE COURT: Any objection?

21 MR. PATTERSON: No objection.

22 THE COURT: Movant's Exhibit 1 is admitted
23 with redactions.

24 MR. SERGI: With redactions.

25 (Movant's Exhibit No. 1 admitted)

1 Q. (BY MR. SERGI) Would you briefly tell the
2 Court and summarize what it is that you say in this
3 letter, what was your intent?

4 A. If we could miscount the first paragraph, which
5 basically just says I thought if you removed the
6 so-called falsified data, which I didn't know what it
7 was, I still believed -- maybe at that time I knew it
8 was the last couple of compounds in her thesis, whether
9 they were the NMR spectra or whether they were even the
10 right structures. I'll maybe get to that point later
11 because that's an issue that I think is somewhat
12 crucial. She did have enough for a thesis, in fact,
13 more than enough. I've seen many Ph.D. theses at all of
14 these universities that I've been, and I've been on
15 committees all over the world doing Ph.D. theses. When
16 I was at Imperial College, I used to go to Nigeria at
17 least once every couple of months to be chairman of
18 various Ph.D. theses because all of the latter day
19 British Empire came under the aegis of London
20 University, all of their exams. Sorry to get
21 sidetracked, but --

22 Q. Now, have you ever asked to see the actual
23 data?

24 A. Yes.

25 Q. Were you given access to that data?

1 A. No.

2 Q. Did that concern you?

3 A. Yes, it did.

4 Q. Why?

5 A. Because I wanted to see the raw data. I see
6 the raw data of all of my own students, and so I'm asked
7 to comment on something that I can't even see.

8 Q. Okay.

9 A. And NMR spectra, I might add, are very easy to
10 see, whether they're good ones or bad ones.

11 Q. And why is that?

12 A. Frequent -- frequently there is the tendency of
13 people to round a so-called chemical reaction, get a
14 product, and usually they want it to be what they want.
15 And the first piece of data they take is the proton NMR,
16 nuclear magnetic resonance spectra, and they're doing it
17 off of material that's not purified, and so there's a
18 lot of byproducts, could be extensive mixers, solvent
19 peaks in there. It can actually look quite a mess, and
20 I've always encouraged them to say, "Well, the bits and
21 pieces that we can see and believe are good" -- and
22 that's what I always say to the students -- "they may
23 not be quite as good as you think." Can be obscured by
24 all sorts of other material in there, and that they need
25 to purify it, and then re-run the spectra on what I

1 would say pristine homogenous clean material, and then
2 we'd have something to talk about.

3 Q. In order to make an intelligent decision as to
4 whether or not S.O. has committed academic fraud, what
5 type of background would a university administrator have
6 to have in order to competently assess whether or not
7 there's been any academic fraud committed?

8 A. In this particular case --

9 MR. PATTERSON: I'm sorry.

10 THE COURT: Hold on just a moment, please.

11 MR. PATTERSON: Your Honor, I apologize.

12 I just reassert my objection to the relevance of this
13 testimony in light of questioning as to whether it goes
14 to whether the process that's being followed by the
15 University, one, affords her due course of law or, two,
16 whether or not the University has legal authority to
17 revoke her degree, and I'm not seeing the relevance,
18 Your Honor.

19 THE COURT: Okay. And on the latter, the
20 objection is overruled. I think it goes directly to
21 whether or not there's sufficient due process. Thank
22 you.

23 Q. (BY MR. SERGI) The answer to that question is?

24 A. Well, I would say for this specific case, which
25 is highly technical and very specific indole alkaloid

1 problem, you would need somebody who has experience in
2 that area and you would need somebody with minimally a
3 Ph.D., and I would say in some cases somebody who's had
4 some years of teaching and running research.

5 Q. So I want to be very, very specific. In your
6 opinion, what are the minimal criteria that someone
7 would have to have in order to competently assess
8 whether or not academic fraud as alleged by the
9 University has occurred in reviewing this data?

10 MR. PATTERSON: Your Honor, I'm just going
11 to object based on -- I'm not sure that the witness has
12 been qualified as an expert to testify as to what a
13 person in terms of a due process --

14 THE COURT: Sustained.

15 THE WITNESS: That means don't tell you
16 then?

17 THE COURT: Correct. Thank you.

18 Q. (BY MR. SERGI) So let me ask you this. If you
19 were evaluating a degree, in other words, conferring a
20 degree, what would the minimal background and training
21 be of a person who would be able to award or be on a
22 committee to award such a degree?

23 MR. PATTERSON: Your Honor, another
24 objection. This seems to call for speculation, and
25 it -- the witness has not been, again, brought here

1 to --

2 THE COURT: Okay. Sustained. Just lay a
3 little bit more foundation that he's been -- has served
4 in that capacity.

5 MR. SERGI: Okay.

6 Q. (BY MR. SERGI) How many -- how many,
7 approximately, Ph.D. committees have you sat on, sir?

8 A. I'd say minimally, probably about a thousand.

9 Q. And in that time period, has anyone ever sat on
10 that committee that awarded a Ph.D. in organic chemistry
11 that was not a Ph.D. in organic chemistry?

12 A. No.

13 Q. And what do you think the minimum criteria for
14 someone being on such a committee would be?

15 A. I would say a Ph.D. in organic chemistry.

16 Q. Would there be a subspecialty?

17 A. In organic chemistry?

18 Q. Yes.

19 A. Yes. And sometimes physical chemistry. It
20 would depend on the particular area of the thesis but
21 it's involved with enough -- on many committees they
22 have -- say if there's a lot of biology in there, they
23 might have one -- somebody from the pharmacy department
24 or from the biochemistry in particular, but it's always
25 at the Ph.D. level.

1 Q. And so there would always be somebody from
2 organic chemistry and perhaps somebody from another
3 discipline to supplement?

4 A. Yes, yes.

5 Q. Now, have you ever sat on any -- any type of a
6 committee that sought to revoke a degree?

7 A. No.

8 Q. Are you aware of whether or not that -- such
9 committees have been formed at the University of Texas
10 in Austin in chemistry?

11 A. I'm not aware of it.

12 Q. Okay. So would you agree with me that this is
13 a very rare occasion?

14 MR. PATTERSON: Object to the leading
15 question.

16 MR. SERGI: Okay.

17 Q. (BY MR. SERGI) Is this a rare occasion?

18 A. All I can say is from what I have heard so far
19 and including today, I would say it is rare, but I would
20 say also that I'm not in full -- I don't have all the
21 facts, but it seems that some of the people here also
22 don't have all of the facts.

23 Q. And are there similar committees that review
24 the taking away of a property interest such as tenure
25 that are formed at the University of Texas?

1 A. I'm not aware of it.

2 Q. Okay. Have you ever asked Dr. Martin to see
3 the compound that was -- that ultimately was created?

4 A. Yes, I have asked him.

5 Q. Did he allow -- did he tell you what -- did you
6 see that compound?

7 A. No.

8 Q. Were you ever given access to that compound?

9 A. No.

10 Q. Why did you ask him about that?

11 A. Because I wanted to know what -- to this day,
12 it's not in my mind exactly what the problem was. What
13 I will say is that my belief -- and this is something if
14 I flatter myself, you needn't take it too seriously but
15 there's an element of truth in it. I have a reputation
16 of being particularly good at spotting incorrect
17 structures, and there's a nice record in med journals
18 over this, and I would say that the last three
19 structures, there was clearly not adequate data to be --
20 to assign them a specific structure unambiguously.

21 THE COURT: The last three structures?

22 THE WITNESS: Yes, the last three
23 structures in the manuscript that was eventually
24 published.

25 THE COURT: Okay. In this particular

1 case?

2 THE WITNESS: Yes.

3 THE COURT: Thank you.

4 THE WITNESS: Yes.

5 Q. (BY MR. SERGI) Briefly, perhaps, tell the
6 Judge what those three structures are and how this is
7 relevant.

8 A. I don't know whether it's possible to do that
9 without seeing pictures of them. I know they probably
10 don't convey all that much.

11 Q. Okay.

12 A. But they were crucial to the thesis and also
13 which say the data on them -- would you mind if I sort
14 of ramble a little bit?

15 THE COURT: If you think it'll be helpful
16 to the Court in making this determination.

17 THE WITNESS: I'm going to say that I
18 would not have published this paper.

19 Q. (BY MR. SERGI) And why is that?

20 A. Because the data that I was looking at -- when
21 I saw it published, I immediately looked at what was
22 called the supplemental data.

23 THE COURT: And just to lay a little bit
24 of foundation, the paper that you're referring to, this
25 is the paper on which -- or which led to the

1 investigation?

2 MR. SERGI: Yes.

3 THE COURT: Okay.

4 Q. (BY MR. SERGI) Let's talk about -- you just
5 referred to a paper. What paper was that, sir?

6 A. It's the Organic Letters paper on Lundurine.

7 Q. And you recall seeing that paper published; is
8 that correct?

9 A. Yes.

10 THE COURT: By whom?

11 MR. SERGI: By Organic Letters.

12 THE WITNESS: It was published in the U.S.
13 journal Organic Letters and the senior also was
14 Professor Stephen Martin. The reason I said I wouldn't
15 have published it, it was premature. By that I mean the
16 object of the paper was to synthesize the natural
17 product, which is the subject of its introduction in
18 that paper. Well, the natural product was not
19 synthesized. It was the classical what they call
20 "approaches to." I always used to say that a good
21 referee would put in parentheses behind that "approaches
22 to," "approaches away from" also, because it should not
23 have been published. The referee should have turned it
24 down. Then when I looked at the supporting data, it was
25 messy. In other words, what we call a background piece

1 were almost as high as the ones that you wanted to
2 assign structure to.

3 Q. (BY MR. SERGI) Can you explain what that means
4 in layman's terms?

5 A. It looked like a jungle of rather nice clean
6 data. It was like trying to spot a mosquito on an
7 elephant. That's not a bad analogy for these days.

8 Q. And you noted -- who was the principal author
9 of that article?

10 A. Yes. Professor Stephen Martin.

11 Q. And who was responsible for checking the
12 content of that article?

13 A. Professor Martin.

14 Q. And do you recall how long after S.O. left the
15 University this was published?

16 A. She left in 2008. I think the paper appeared
17 in 2013.

18 Q. And were there any other co-authors listed?

19 A. Yes.

20 Q. And were they people that succeeded S.O. in
21 Dr. Martin's lab?

22 A. Yes. Yes.

23 MR. SERGI: I'll pass the witness for
24 right now.

25 THE COURT: Okay. Any cross-examination

1 questions for this witness?

2 MR. PATTERSON: No questions, Your Honor.

3 THE COURT: Okay. Thank you very much for
4 your time and your testimony this morning. We certainly
5 appreciate your help today.

6 All right. Plaintiff, do you have any
7 other witnesses?

8 MR. SERGI: No, Your Honor.

9 THE COURT: Okay. All right. You know,
10 we're -- we're in a unique situation and perhaps one
11 that gives us the ability to do things that we wouldn't
12 ordinarily have. I mean, typically when I'm in this
13 position, I'm looking at and serving as sort of an
14 armchair quarterback looking at what happened in the
15 past. In this situation we can look ahead and perhaps
16 make adjustments as needed to prevent what could
17 potentially be the failure to comply with due process.
18 And so while I await the additional briefing that I've
19 requested both on the 1969 opinion from the AG's office
20 as well as your response to the reply, if you intend to
21 do a reply of some sort, and the question as to
22 whether -- or if this should be a rules challenge, to
23 the actual rules the University of Texas is utilizing in
24 this procedure. Any briefing that you all will want to
25 do, I will allow you an opportunity to do that. But

1 really the big picture, I want you-all to seriously
2 consider the process. This has certainly given me
3 concern about the manner in which this graduate is --
4 you know, it sounds like at a minimum you need to have
5 someone with a Ph.D. and minimal years of teaching and
6 research in order to make a determination -- a fair
7 determination as to whether or not her Ph.D. should be
8 revoked. I mean, those are -- those are questions that
9 will be looked at on appeal, if this goes up. Why not
10 address them now? Why not take a look at the manner in
11 which this process is happening and make sure that it's
12 a fair and efficient procedure that gives her and
13 provides her with sufficient due process?

14 I'm not going to stop -- I'm very
15 unlikely -- it's highly unlikely that I would stop the
16 procedure from happening in March. It probably just
17 needs to happen. I will certainly look at anything else
18 y'all send to me in the next week. I think that -- does
19 that sound like a fair amount of time? And I'll do it
20 quicker if you want me to.

21 MR. SERGI: Can I address this briefly?
22 We're in a rush to judgment. We're being -- you know,
23 we're into something that is very unique.

24 THE COURT: Wait. I'm not --

25 MR. SERGI: I'm sorry.

1 THE COURT: -- I'm not there yet. The --
2 what I -- the only thing I can look at right now is the
3 request for injunctive relief means that I have to find
4 imminent harm and I don't see any harm happening until
5 and after there is some resolution at the -- at the
6 conclusion of the hearing. What I will entertain, which
7 I think is fair, given the circumstances and everything
8 that I've heard this morning, is that UT not revoke her
9 Ph.D. until we have some real finality of this process.
10 Does that sound like something that UT can agree to on
11 the onset or do I need to order that?

12 MR. PATTERSON: We could agree, Your
13 Honor, to -- at the conclusion of any appeal, internal
14 appeal that S.O. would take, to hold everything in
15 abeyance for two weeks to give her an opportunity to
16 raise any issues --

17 THE COURT: To come and get a TRO.
18 Is that sufficient time for you-all to
19 seek relief from -- emergency relief from the Court?

20 MR. SERGI: Two issues, Your Honor.

21 THE COURT: Uh-huh.

22 MR. SERGI: What I would -- I believe we
23 would ask for 30 days, I think. Second of all, Your
24 Honor, I would ask that you take this case and take it
25 off of the central docket because I think this has some

1 very unique propositions, you're already educated to
2 some of it, and I think it would make sense that we come
3 to Your Honor with any emergency.

4 THE COURT: Request for emergency relief?

5 MR. SERGI: Yes.

6 THE COURT: Okay.

7 MR. PATTERSON: We could agree to 30 days.

8 THE COURT: Okay.

9 MR. PATTERSON: Absent a TRO at the end of
10 those 30 days, we would proceed with -- if the finding
11 is to revoke her degree.

12 THE COURT: Okay. I'll take the case on a
13 2.6 designation. I think it makes sense given what I've
14 already heard and reviewed. So that -- that will mean
15 that all future hearings will come back to this Court.

16 I will allow the procedure to take place.
17 I am urging the University to go through the work
18 required. I don't know how lengthy your list is of
19 hearing officers, but to find someone who has adequate
20 education, adequate experience in the -- in order to
21 make a fair determination. Okay? So ideally -- and
22 again, we're in a really unique situation here. Ideally
23 that person should have the Ph.D. and should have the
24 experience in reviewing these -- these dissertations. I
25 don't know how many people you have in the pipeline, I

1 have no idea, and I didn't hear that this morning. Does
2 that sound like something that you can do?

3 MR. PATTERSON: I mean, we can look into
4 it. I can't make any representations until we actually
5 know who's available for that sort of process.

6 THE COURT: Right.

7 MR. PATTERSON: I mean, this is a -- this
8 is a limited pool of people who agree to participate in
9 this process. The University doesn't pull --

10 THE COURT: Well, and that's the question
11 I have. I -- we need to see -- I would expect to see at
12 least an effort to try to find someone who is adequately
13 and suitably available. Someone who has the sufficient
14 education and experience in order to make a fair
15 determination, to be able to look at this data and
16 determine whether or not it was falsified or not, or
17 whatever the question is that UT's looking to answer.
18 And that you -- I appreciate the agreement that you-all
19 have reached that it not be someone who's not from that
20 area, who could potentially have that conflict. I
21 recognize and I appreciate the agreeable nature of that
22 stipulation, that it not be Professor Lungwitz, and I
23 urge you to find someone in this field.

24 MR. SERGI: Your Honor, it -- I mean,
25 quite frankly, and again, this was from a different

1 case. They've gotten folks from other universities
2 outside the system.

3 THE COURT: Uh-huh.

4 MR. SERGI: And what I -- what I was
5 alluding to earlier is I think we're in a kind of a rush
6 to judgment. The other issue we have is we're getting
7 some very -- this is very hypertechnical.

8 THE COURT: Uh-huh.

9 MR. SERGI: We have other witnesses that
10 we're still -- you know, we can't even approach, so we
11 have an issue of preparing for this --

12 THE COURT: Right.

13 MR. SERGI: -- by the 4th of March. I
14 will also add the reason, just so you know, my client
15 isn't even here. She's currently breastfeeding her
16 child, and we decided it was not a good idea to have her
17 sitting in here.

18 THE COURT: Right.

19 MR. SERGI: And so --

20 THE COURT: Well, why don't -- why don't
21 you-all talk about dates? Is March 4th an absolute
22 necessary date? If you don't even have the selection of
23 the hearing officer yet, perhaps you-all should talk
24 about pushing that date until a date that is convenient
25 for the hearing officer and certainly the movant.

1 MR. PATTERSON: We'll need to confer
2 regarding whether that date's actually a conflict for
3 plaintiff. We've -- we've already moved it a few times,
4 and so it -- there's been accommodations given, and so
5 I --

6 THE COURT: I understand.

7 MR. PATTERSON: -- we would have to confer
8 and determine if it's appropriate to move it again if
9 there's an actual request to move it to a date certain.

10 THE COURT: Because we're only talking
11 about three weeks away, and someone needs to -- you-all
12 haven't -- I presume that you haven't shared a witness
13 list yet. You have not shared the evidence you intend
14 to use at the hearing.

15 MR. PATTERSON: Witnesses, possible
16 witnesses were on the notice, each of the notices that
17 have gone out for each of the hearings. Evidence will
18 be given pursuant to rules five -- at least five days
19 before the hearing. I mean, the rules provide for when
20 that is shared. Again, we would have to confer.

21 THE COURT: I mean, just think -- think
22 this through. I mean, think about what is -- in the
23 event that she doesn't prevail and this goes up on
24 appeal, what are the things that those courts are going
25 to be looking at in order to determine whether or not

1 there was due process? And so the more process you
2 provide, the less likely there would be a reversal of a
3 decision. So, you know, if you provide a fair process,
4 then we're -- we're looking at different issues, but at
5 least you can address the due process issue by ensuring
6 she has someone who is sufficiently trained and who --
7 and providing -- is there some reason why she can't have
8 counsel at this hearing?

9 MR. PATTERSON: She can have counsel. The
10 question was whether or not counsel, him or herself,
11 could engage in questioning of witnesses versus advising
12 the party.

13 THE COURT: Why not?

14 MR. PATTERSON: I mean, the policy --
15 again, I mean, I don't want to adjudicate that issue in
16 this forum, Your Honor, at this moment. There are
17 considerations that UT may have on that point, and
18 that's at UT's discretion.

19 THE COURT: Understood, but -- but you
20 should expect, though, that those are questions that
21 might be asked on appeal.

22 MR. PATTERSON: Sure.

23 THE COURT: And if you're -- if you're
24 looking back retrospectively on whether or not there was
25 due process, then certainly the more that you provide,

1 the less question.

2 MR. PATTERSON: I will confer with them on
3 that issue -- all these issues, of course.

4 THE COURT: Okay. All right. Do you-all
5 want a week in order to provide any additional briefing
6 on the plea? Is that sufficient time?

7 MR. PATTERSON: That would be sufficient,
8 Your Honor.

9 THE COURT: Okay.

10 MR. SERGI: If we could get maybe ten
11 days, we have a couple of other burning deadlines and --

12 THE COURT: Okay. Well, I understood that
13 the State wanted the -- they wanted to be able to reply
14 to what you filed last night, so they have a week to
15 reply, and then you can have an additional week to
16 respond. Okay? So that gives you -- that gives you
17 two weeks, and I will have all my rulings which would be
18 the plea and the request for injunctive relief shortly
19 thereafter, as quick as I can after --

20 MR. PATTERSON: Just to clarify a point.

21 THE COURT: Uh-huh.

22 MR. PATTERSON: On the -- in terms of the
23 briefing concerning the rule challenge, is that
24 something you want plaintiffs to brief and for us to
25 respond to at some point, or how would you prefer that

1 be handled?

2 THE COURT: Well, yes, because it's not --
3 it's not presently briefed, and so if you want me to
4 consider a rules challenge --

5 MS. KAWAJA: Actually, Your Honor, I would
6 argue that it is briefed because it's the second part of
7 our claims for declaratory relief.

8 THE COURT: Okay.

9 MS. KAWAJA: The first set of declarations
10 that we're asking for which we contend are ripe and
11 ready to be decided, their authority and the scope of
12 it.

13 THE COURT: Okay. It's contained within
14 your reply to the plea?

15 MS. KAWAJA: No. It's in our petition.

16 THE COURT: Okay.

17 MS. KAWAJA: And then the --

18 THE COURT: But -- but what do I have in
19 front of me today -- that would be for final?

20 MS. KAWAJA: Correct.

21 THE COURT: So you don't -- you don't --
22 I'm not requiring that you-all brief something that's
23 not in front of me today.

24 MS. KAWAJA: Okay.

25 THE COURT: If you want me to consider it,

1 I will, but just get any briefing to me so that
2 everybody has everything they want me to consider within
3 and -- or before -- looks like 17 -- today is the 17th,
4 so we're talking about the 2nd of March, which is right
5 before your hearing. Give me at least as much time as
6 you can. What date is the hearing scheduled?

7 MR. PATTERSON: March 4th.

8 MR. SERGI: March 4th.

9 THE COURT: The 4th, that Friday.

10 MS. KAWAJA: And just -- you want briefing
11 on the constitutionality of their rules and why we think
12 they're unconstitutional and should be applied.

13 THE COURT: If you want me to stand on
14 what you've already briefed -- or what's in your
15 petition, that's fine. That's fine.

16 MS. KAWAJA: There might be some
17 additional --

18 THE COURT: If you want me to consider
19 anything other than what you have already sent me, then
20 just make sure that I get it as quickly as possible --

21 MS. KAWAJA: Certainly.

22 THE COURT: -- so that I can get you a
23 ruling no later than March 2nd.

24 MS. KAWAJA: Okay.

25 MR. SERGI: So we have -- basically each

1 party has a week to submit briefing and then each party
2 has a week to --

3 THE COURT: To respond.

4 MR. SERGI: -- to respond.

5 THE COURT: Uh-huh. That's correct.

6 Any other questions? And, you know, if --
7 if you-all can agree to move the hearing date a little
8 down the road, then just let me know so that I'm not in
9 a mad dash to get responses within 24 hours essentially,
10 which that briefing schedule is going to allow me.
11 Okay? All right. Any other questions, comments,
12 concerns before everybody goes? No? All right. Thank
13 you very much. Have a good day.

14 MR. PATTERSON: Thank you.

15 (Proceedings concluded)

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1 THE STATE OF TEXAS)

2 COUNTY OF TRAVIS)

3 I, Della M. Rothermel, Official Court
4 Reporter in and for the 250th District Court of Travis
5 County, State of Texas, do hereby certify that the above
6 and foregoing contains a true and correct transcription
7 of all portions of evidence and other proceedings
8 requested in writing by counsel for the parties to be
9 included in this volume of the Reporter's Record, in the
10 above-styled and numbered cause, all of which occurred
11 in open court or in chambers and were reported by me.

12 I further certify that this Reporter's
13 Record of the proceedings truly and correctly reflects
14 the exhibits, if any, admitted by the respective
15 parties.

16 WITNESS MY OFFICIAL HAND this the 21st day
17 of February, 2016.

18 /s/: Della M. Rothermel
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